



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC CASE NO. 218 OF 2015**

**PETER WANJOHI THUMBI.....APPLICANT**

**-VERSUS-**

**NJOKI KANYURU.....RESPONDENT**

**RULING**

1. Before me for determination is the Notice of Motion dated 27<sup>th</sup> July 2020 brought under Sections 1A and 3A of the Civil Procedure Act and Order 24 Rules 3 and 7 of the Civil Procedure Rules where the Applicant seeks for **an order for the revival of this suit which had abated. The Applicant also seeks for extension of time for substitution of the original Plaintiff.**
2. The said application is premised on the grounds set on its face as well as on the sworn Affidavit of Rose Wanjiku Gichohi the Applicant the 27<sup>th</sup> July 2020 to the effect that the original Plaintiff/Applicant in the Originating Summons herein died on the 6<sup>th</sup> May 2017 after he had closed his case.
3. That it took time for family members to trace his counsel and thereafter obtain the letters of administration by which time the suit herein had abated.
4. That since the cause of action survived the death of the Plaintiff, the Applicant who is an only daughter to the Plaintiff, desirous of proceeding with this suit, obtained grant of letters of administration on the 21<sup>st</sup> May, 2020 and subsequently filed this application.
5. The Applicant deponed was that the Respondent shall not suffer any prejudice if the same is allowed.
6. The Application was opposed by the Respondent's grounds of opposition dated the 5<sup>th</sup> August 2020 to the effect that it lacked merit and was an abuse of the Court process and further that the same was time barred and therefore in the light of the equitable doctrine of laches, the Court ought not to aid the indolent. That further, the applicant had not demonstrated a tenable reason for the inordinate delay in applying to revive the suit 3 (three) years after the passing away of the deceased.
7. Although the Court had ordered for the application to be disposed of by way of written submissions, none of the parties complied and therefore the Court shall rely on the averments in the parties' respective applications as well as on the Court record and the law applicable.

**Determination.**

8. I have considered the pleadings and submissions made by the parties herein. The issue is whether the suit that abated after the passing away of the deceased Plaintiff should be revived, and if so, whether the deceased Plaintiff should be substituted. Order 24 Rule 3 of the Civil Procedure Rules provides for the effect of death of one of several Plaintiffs or of sole Plaintiff. It states as follows:

*(1) Where one of two or more Plaintiffs dies and the cause of action does not survive or continue to the surviving Plaintiff or Plaintiffs alone, or a sole Plaintiff or sole surviving Plaintiff dies and the cause of action survives or continues, the Court, on an application made in that behalf, shall cause the legal representative of the deceased Plaintiff to be made a party and shall proceed with the suit.*

*(2) Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased Plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased Plaintiff:*

*Provided the Court may, for good reason on application, extend the time*

9. It is clear from the said provisions that a suit abates by operation of the law when no substitution is made within one year on the death of either a Plaintiff or Defendant. However, Order 24 Rule 7(2) of the Civil Procedure Rules gives the Court discretion to revive an abated suit if there is sufficient proof that the Applicant was prevented by any sufficient cause from continuing the suit. The said provision provides as follows:

*The Plaintiff or the person claiming to be the legal representative of a deceased Plaintiff or the trustee or official receiver in the case of a bankrupt Plaintiff may apply for an order to revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.*

10. The Court of Appeal in the case of **The Hon. Attorney General v The Law Society of Kenya & Another – Civil Appeal (Application) No. 133 of 2011** observed as follows as to the meaning of sufficient cause:

**“Sufficient cause or good cause in law means:-**

**‘The burden placed on a litigant (usually by Court rule or order) to show why a request should be granted or an action excused.’  
See Black’s Law Dictionary, 9<sup>th</sup> Edition, page 251.**

**Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubt in a Judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.”**

11. In the instant application, the intended Plaintiff averred that following the death of her father the original Plaintiff on 6<sup>th</sup> May 2017, she took time to trace and contact his advocate because her father had become blind and senile and therefore communication had become difficult.

12. That on learning of the progress of the case, she had taken the initiative to seek for the letters of administration which was issued to her pursuant to which she had instituted the present application.

13. Under sections 1A and 1B of the Civil Procedure Act Cap 21 Laws of Kenya, the Court is enjoined to foster and facilitate the overriding objective of the Act to render justice to parties in all civil proceedings in a just, expeditious, proportionate and affordable cost to the parties. Article 159 (2) (a) (b) (c) and (d) of the Constitution further underscores the role of the Court in the administration of Justice while Article 159 (2) (d) provides that justice shall be administered without undue regard to procedural technicalities.

14. These Constitution provisions when mirrored against Sections 1A and 1B of the Civil Procedure Act, clearly enjoin the Courts to endeavor to do substantive justice to the parties without necessarily being shackled by procedural technicalities.

15. While it is true that the application was filed after the expiry of the stipulated period yet in my view and noting from the annexures herein attached, the fact that when the applicant obtained a grant of letters of administration on the 21<sup>st</sup> May, 2020 and filed this application on the 21<sup>st</sup> July, 2020, in my humble view is an indication that she was desirous to have this matter heard and determined.

16. Order 24 rule 3 (2) of the Civil Procedure Rules provides that the Court may extend time for good reason and as such, whether or not to extend time for a legal representative of the deceased Plaintiff to be made a party to a suit in place of such deceased after the expiry of the prescribed time is a matter that calls for the exercise of the discretion of the Court.

17. As noted in the Court proceedings, the deceased had already closed his case and I am satisfied that the reason given by the Applicant in the present instance is good enough.

18. The Applicants’ application is accordingly allowed and it is hereby ordered as follows:

i. The abated suit is herein revived, the deceased Plaintiff Peter Wanjohi Thumbi is herein substituted by his legal representative Rose Wanjiku Gichohi the Applicant herein so as to enable the Court to determine the real issues in controversy between the parties.

ii. That Applicant be and is hereby granted leave to amend the pleadings accordingly, if need be and shall thereafter file and serve the same 21 days from the date of this ruling.

iii. Costs of the application shall be in the cause.

**Dated and delivered at Nakuru this 30<sup>th</sup> day of November 2020.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**