Waweru & another v Njuguna (Environment & Land Case 140B of 2021) [2025] KEELC 4575 (KLR) (17 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4575 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ENVIRONMENT & LAND CASE 140B OF 2021

JM ONYANGO, J

JUNE 17, 2025

BETWEEN

NAOMI WANJIKU WAWERU ..... 1ST PLAINTIFF

ALEX WAWERU KIBURA ..... 2ND PLAINTIFF

AND

TERESIAH NYOKABI NJUGUNA ..... DEFENDANT

RULING

1. Josephat Ndichu Kinuthia and Hannah Mbithe Wanjiku, the Applicants herein filed a Notice of Motion dated 15th August 2023 seeking to be joined in this suit in place of Naomi Wanjiku Waweru (Deceased).

2. The application is anchored on the grounds set out in the Notice of Motion and the supporting affidavit of Josepha Ndichu Kinuthia sworn on 15th August 2023.

3. In the said affidavit he deposes that he and Hannah Mbithe Wanjiku are the son and daughter of Naomi Wanjiku Waweru (Deceased) the 1st Plaintiff herein and they have been issued with a Grant of Letters of Administration in respect of her estate. The deceased had a claim over land parcels number Ndumberi/ Ndumberi /2531, Ndumberi/ Ndumberi /2532 and Ndumberi/ Ndumberi/392 (hereinafter, suit properties) which were held by the late Njuguna Waweru in trust for himself and his siblings. The said Naomi Wanjiku Waweru (Deceased) was a sister to Njuguna Waweru (Deceased) and a beneficiary of his estate.

4. It is his deposition that they were unable to apply for substitution owing to lack of funds. He prays that they be allowed to substitute the deceased so that they can protect their interest in the suit properties.

5. The Defendant opposed the application through Grounds of Opposition dated 19th October 2023 in which she states that the application for substitution is incompetent, misconceived and an abuse of the

court process. It is her position that the application has been filed after inordinate delay and that it is an afterthought intended to circumvent the expeditious disposal of this matter.

6. The court directed that the application be canvassed be disposed of through written submissions which direction was duly complied with by both parties.

7. Having carefully perused the application, the response in opposition and the parties' respective submissions, the key issue for determination is whether the application dated 15th August 2023 is merited.

Analysis and Determination

8. The present Application seeks to have the Applicants joined in this suit in place of Naomi Wanjiku Waweru (Deceased) on the strength of letters of administration obtained on 8th September 2014.

9. The Application for substitution was filed on 15th August 2023, nearly a decade after the Grant of Letters of Administration was obtained.

10. The Applicants contend that every litigant is entitled to their day in court; a right so fundamental that it forms the bedrock of fair adjudication. They further assert that the present Application was made without undue or inordinate delay.

11. However, this assertion, while invoking the noble principle of audi alteram partem, must be weighed not merely against abstract ideals but in light of the factual chronology of events and the conduct of the Applicants themselves.

12. Order 24 of the Civil Procedure Rules, 2010, stands as the legislative beacon guiding the court when the hand of mortality interrupts the course of justice by claiming one or more of the parties to a suit. It delineates, with clarity the procedural roadmap to be followed in such an event.

13. Specifically, Order 24, Rule 3 addresses the situation where one of several plaintiffs, or a sole plaintiff, passes away. The provision states:

> "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:
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> Provided the court may, for good reason on application, extend the time."

14. Moreover, Order 24, Rule 7 elucidates the legal consequences flowing from abatement or dismissal occasioned under this Order:

> "7.
>
> (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

2) 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."

15. Thus, while the law draws a firm line against the resurrection of claims long laid to rest, it leaves ajar a narrow but purposeful door through which only those who can demonstrate genuine impediment, rather than mere neglect, may pass and seek the grace of the Court in reviving a suit otherwise destined for procedural oblivion.

16. The Applicants herein have indeed sought an order for substitution. However, it is beyond dispute that by the time this Application was brought before the Court, the suit had already abated, the statutory period of one year having long lapsed from the date of the Deceased's demise which occurred on 7th December 2012. The passage of time had rendered the suit procedurally defunct in the eyes of the law.

17. Accordingly, in keeping with the provisions of Order 24 Rule 7(2), the Applicants were first required to seek the revival of the abated suit before inviting the Court to entertain an application for substitution. Procedural sequence is not a matter of mere formality, but a safeguard of judicial order, and where a suit has abated, substitution cannot precede restoration.

18. Regrettably, the Applicants have failed or otherwise neglected to confront the fundamental issue at the heart of this Application: that the suit had abated by operation of the law.

19. This omission is not a mere oversight but a substantive lapse, for without addressing the legal consequence of abatement, the foundation upon which their Application rests remains infirm. The Court cannot be invited to act as though the suit remains alive when the Applicants themselves have not taken the requisite steps to breathe life back into it.

20. Learned counsel for the Respondent submits that the suit, having abated on 8th December 2013, ceased to have any legal life and is therefore not amenable to substitution.

21. Order 24 of the Civil Procedure Rules was extensively addressed by the Court of Appeal in Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others [2017] eKLR in the following terms:

> " Where a suit abates, no fresh suit can be brought on the same cause of action because it is extinguished and cannot be maintained in the form it was originally presented. Because the suit will only abate where, within one year of the death of the plaintiff no application is made to cause the legal representative of the deceased plaintiff to be joined in the proceedings, it is imperative and we may add, logical, where the legal representative is not so joined within one year, that an application be made for extension of time to apply for joinder of the deceased plaintiff's legal representative. It is only after the time has been extended that the legal representative can have capacity to apply to be made a party. Order 24 must be construed by reading it as a whole and the sequence in which it is framed must be followed without short circuiting it. The proviso to rule 3(2) to the effect that the court may, for good reason on application, extend the time goes to show that without time being extended, no application for revival or joinder can be made. It is the effluxion of time that causes the suit to abate. It is that time that must, first be extended. Once time has been enlarged, only then

> can the legal representative bring an application to be joined in the proceedings. Again it is only after the legal representative has been joined as a party that he can apply for the revival of the action. In our view there is nothing objectionable to making an omnibus application for all the three prayers. But it is incompetent to seek joinder or revival when the prayer for more time to apply has not been granted..."(emphasis mine)

22. The Court of Appeal's exposition leaves no room for ambiguity: where a suit has abated by operation of law, any attempt to leapfrog the procedural safeguards laid down under Order 24 is not merely irregular but legally untenable.

23. The Applicants, in seeking substitution without first securing an extension of time or reviving the abated suit, have effectively failed to anchor their Application within the confines of the law.

24. I must add that litigation is governed not merely by the merits of a party's cause but equally by adherence to the procedural architecture that gives coherence and predictability to the judicial process.

25. The rules under Order 24 are neither ornamental nor optional; they are binding prescriptions that must be observed to safeguard the integrity of proceedings where a party has died. To disregard them is to invite disorder and to erode the discipline required of litigants who seek the court's intervention.

26. It should be noted that the mere invocation of Article 159(2)(d) of *the Constitution* does not confer upon the Applicants a license to circumvent the clear and mandatory procedural requirements enshrined in the Civil Procedure Rules.

27. The Applicants' failure to seek revival before moving for substitution is not a mere procedural oversight but a fundamental flaw that strikes at the very heart of their Application. The law is clear and unyielding; a suit that has abated ceases to exist in the eyes of the Court and cannot be resuscitated through substitution alone. Without first restoring the suit to life by proper application, the notion of substitution is rendered a hollow exercise.

28. In light of these settled principles and having regard to the clear dictates of the law, I find no merit in the Application.

29. Accordingly, the Application dated 15th August 2023 is hereby dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED VIRTUALLY, AT THIKA THIS 17TH DAY OF JUNE 2025.

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J. M. ONYANGO

JUDGE

In the presence

Miss Wainaina for Ms Machua for the Plaintiffs

Mr. Njuguna for the Defendant

Court Assistant: Hinga