



**Okello v Staussi t/a Andhoga Staussi & Company Advocates & another; Sigu (Applicant)
(Suing as the Administrator of the Estate of Francis Sigu Okello, Deceased) (Environment and
Land Case Civil Suit 796 of 2015) [2025] KEELC 6402 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6402 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND CASE CIVIL SUIT 796 OF 2015
SO OKONG'O, J
SEPTEMBER 25, 2025
(FORMERLY HIGH COURT CIVIL SUIT NO. 82 OF 2010)**

BETWEEN

FRANCIS SIGU OKELLO PLAINTIFF

AND

**JANE ANDHOGA STAUSSE T/A ANDHOGA STAUSSE & COMPANY
ADVOCATES 1ST DEFENDANT**

WILLIAM STEPHEN ODONGO 2ND DEFENDANT

AND

**JOEL OWINO SIGU APPLICANT
SUING AS THE ADMINISTRATOR OF THE ESTATE OF FRANCIS SIGU
OKELLO, DECEASED**

RULING

1. The Plaintiff brought this suit against the Defendants on 3rd July 2010. The Plaintiff averred that he was, at all material times, the registered owner of land parcel Kisumu/Kapuonja/2197 (hereinafter referred to as “the suit property”). The Plaintiff averred that the 1st Defendant had illegally and fraudulently caused the suit property to be transferred and registered in the name of the 2nd Defendant, who was unknown to him and to whom he had not sold the property. The Plaintiff sought judgment against the Defendants for a declaration that the transfer of the suit property from the Plaintiff to the 2nd Defendant was fraudulent, illegal, null and void, an order cancelling the registration of the 2nd Defendant as the owner of the suit property and restoring the property to the name of the Plaintiff, general damages and costs of the suit.



2. The 1st Defendant entered an appearance and filed a statement of defence on 14th April 2011. The 1st Defendant denied that the suit property was transferred to the 2nd Defendant by the 1st Defendant illegally, fraudulently and in breach of trust. The 1st Defendant averred that the 2nd Defendant, who lived abroad, was introduced to her by the Plaintiff, who had already entered into an agreement of sale of the suit property with the 2nd Defendant. The 1st Defendant averred that the Plaintiff had introduced the 2nd Defendant to her so that she could act on behalf of the 2nd Defendant in the transaction, as he was out of the country. The 1st Defendant averred that she acted for the 2nd Defendant in the transaction in which the Plaintiff sold the suit property to the 2nd Defendant at Kshs. 520,000/-. The 1st Defendant averred that the Plaintiff obtained all the requisite consents and the property was ultimately transferred and registered in the name of the 2nd Defendant after the Plaintiff was paid the said purchase price of Kshs. 520,000/-. The 1st Defendant termed the Plaintiff's suit misconceived and an abuse of the process of the court.
3. The 2nd Defendant neither entered an appearance nor filed a defence. The Plaintiff died on 15th June 2011. This information was communicated to the 1st Defendant by the Plaintiff's son, Joel Owino Okello, who not only furnished the 1st Defendant with a copy of his father's death certificate, but also swore an affidavit on 11th October 2013 confirming the death of the Plaintiff, the fact that he was a witness to the agreement dated 16th September 2005 between the Plaintiff and the 2nd Defendant for the sale of the suit property and the fact that the family had not done succession in respect of the estate of the Plaintiff. Based on that information, the 1st Defendant filed an application herein on 20th November 2013 seeking an order that the suit had abated. The documents I have referred to above were annexed to the 1st Defendant's affidavit in support of the application. The application was served upon the advocates then on record for the Plaintiff and was not opposed. On 27th October 2014, the court ordered that this suit had abated following the death of the Plaintiff and non-substitution of the deceased Plaintiff within one year.
4. What is now before me is the Notice of Motion application dated 4th December 2024 brought by Joel Owino Sigu as the administrator of the estate of the deceased Plaintiff, Francis Sigu Okello. In the application, the applicant has sought the following orders;
 1. That the court be pleased to enlarge the time for the application to substitute the deceased Plaintiff.
 2. That the court be pleased to grant leave to the applicant to substitute the deceased Plaintiff.
 3. That the court be pleased to set aside the orders issued on 27th October 2014 declaring the suit as having abated and revive the suit for hearing and determination of merit.
 4. That the applicant be granted leave to amend the plaint dated 2nd June 2010 to reflect the substitution.
 5. That the costs of the application be provided for.
5. The application was brought on the grounds set out on the face thereof and on the affidavit of the applicant, Joel Owino Sigu, sworn on 4th December 2024. The applicant averred that the deceased Plaintiff was his father and that he died on 15th June 2011. The applicant averred that he was appointed as the administrator of the estate of the deceased in *Kisumu High Court(sic) Succession Cause No. E341 of 2021*. The applicant averred that while he was in the process of distributing the estate of the deceased Plaintiff to the beneficiaries, he learnt of the existence of an inhibition against the title of the suit property. The applicant averred that the discovery led him to learn of the existence of this suit that had



been filed by the deceased to challenge the illegal alienation of the suit property by the Defendants. The applicant averred that upon perusal of the court file, he noted that following the death of the Plaintiff, the suit was marked as having abated on 27th October 2014, and the court file closed. The applicant averred that the estate of the deceased stood the risk of losing its legitimate claim over the suit property unless the orders sought were granted.

6. The 1st Defendant opposed the application through the grounds of opposition dated 27th February 2025. The 1st Defendant contended that the application was misconceived, frivolous, and amounted to an abuse of the process of the court. The 1st Defendant averred that the application was brought after an inordinate delay of 14 years since the death of the deceased Plaintiff. The 1st Defendant contended that the suit sought to be revived was time-barred. The 1st Defendant averred that no valid grounds had been put forward on the basis of which the court could exercise its discretion in favour of granting the orders sought.
7. The application was heard through written submissions. The applicant filed submissions dated 11th March 2025, while the 1st Defendant filed submissions dated 7th April 2025. The applicant submitted that the court has the power to revive an abated suit and that the applicant had shown sufficient cause to warrant the grant of the order. The applicant submitted that he was not aware of the particulars of this suit that had been instituted by the deceased Plaintiff, despite his best efforts to obtain the information so that he could substitute the deceased. The applicant submitted that it was after obtaining a grant of letters of administration and attempting to distribute the estate of the deceased Plaintiff that he obtained information about this suit and the fact that it had been marked as having abated. The applicant submitted that the delay in bringing the application was not intentional.
8. In her submissions in reply, the 1st Defendant submitted that no good reason had been given by the applicant to warrant the extension of time to apply for the revival of the suit and substitution of the deceased Plaintiff. The 1st Defendant submitted that the application was brought 14 years after the death of the Plaintiff and 2 years after the applicant obtained a confirmed grant of letters of administration in respect of the estate of the deceased Plaintiff. The 1st Defendant submitted that a delay of 14 years was unreasonably inordinate and unexplained in the affidavit in support of the application. The 1st Defendant submitted that this unexplained delay disentitled the applicant to the exercise of the court's discretion in his favour. In support of this submission, the 1st Defendant cited the case of *Rebecca Mijide Mungola & Another v Kenya Power & Lighting Company Ltd. & Others*, Nairobi Civil Appeal No. 283 of 2015, in which the Court of Appeal dismissed an application for the revival of an abated suit that had been brought 6 years from the date of the death of the deceased Plaintiff without proper explanation for the delay. The 1st Defendant submitted that the entire affidavit in support of the application did not provide any explanation for the delay in bringing the present application. The 1st Defendant submitted that the explanation for the delay given by the applicant in his submissions was inadmissible as a submission is not evidence. The court was urged to dismiss the application.

Analysis and Determination

9. I have considered the application together with the affidavit filed in support thereof. I have also considered the grounds of opposition filed by the 1st Defendant in opposition to the application. Finally, I have considered the submissions by the advocates for the parties and the authorities cited in support thereof. The applicant's application was brought under Order 24, Rules 3 and 7 of the *Civil Procedure Rules*.

Order 24 Rule 3 of the *Civil Procedure Rules* provides as follows:



3.

(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.”

Order 24 Rule 7(2) of the *Civil Procedure Rules* provides that:

“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.”

It is common ground that the court’s power to extend the time within which to apply to substitute a deceased Plaintiff is discretionary. The proviso to Order 24 (3) (2) of the *Civil Procedure Rules* provides that the time for bringing an application for substitution can only be extended for “good reason”. Order 24 Rule 7(2) of the *Civil Procedure Rules* also provides that an abated suit can only be revived upon the applicant showing “sufficient cause”.

10. In *Attorney General v Law Society of Kenya & another* [2017]eKLR, cited by the applicant, sufficient or good cause was defined as follows:

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*, 9th Edition, page 251.

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

11. I am not satisfied that the applicant has shown sufficient cause to warrant the extension of time within which to apply for the substitution of the deceased Plaintiff with his legal representative, and the revival of the abated suit. It is common ground that the application was brought 13 years after the death of the Plaintiff on 15th June 2011, and 2 years after the applicant was issued with a confirmed grant of letters of administration in respect of the deceased’s estate. As correctly submitted by the 1st Defendant, the applicant has not given any explanation for the delay in bringing the application in his affidavit in support of the application. There is therefore no basis upon which this court can exercise its discretion in favour of the applicant. The applicant claimed in his submissions that the delay in bringing the application was occasioned by the fact that he was not aware of this suit. As correctly submitted by the 1st Defendant, a submission is not evidence and, as such, cannot prove or disprove a fact. Even if I were to consider that explanation, it would still not remove the applicant from the woods. From the evidence on record, it is clear that the applicant was aware of this suit long before he brought the



present application. As mentioned earlier, it was on the strength of an affidavit sworn by the applicant and the death certificate furnished by the applicant to the 1st Defendant herein that the court marked the suit herein as having abated. If the applicant was not aware of the suit, how did he know that the 1st Defendant was a party to the suit, and why did he release a copy of the Plaintiff's death certificate to her?

Conclusion

12. It is my finding that the applicant's application was brought after an inordinate delay, which has not been reasonably explained. I therefore decline to exercise my discretion in favour of granting the orders sought by the applicant. The Notice of Motion application dated 4th December 2024 is dismissed. Each party shall bear its costs of the application.

DELIVERED AND SIGNED AT KISUMU ON THIS 25TH DAY OF SEPTEMBER 2025

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Odeny for the Plaintiff/Applicant

Mr. Ragot for the 1st Defendant/Respondent

N/A for the 2nd Defendant/Respondent

Ms. J.Omondi-Court Assistant

