



**Karisa & 15 others v Sherman; Kassim (Interested Party); Sherman
(Intended Interested Party) (Environmental and Land Originating Summons
E009 of 2024) [2025] KEELC 7131 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7131 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E009 OF 2024
SM KIBUNJA, J
OCTOBER 22, 2025**

BETWEEN

**WILSON KAHINDI KARISA 1ST APPLICANT
LEONARD KANGA KANDORO 2ND APPLICANT
SAMUEL NGOLO CHARO 3RD APPLICANT
RANDU KITI KOMBE 4TH APPLICANT
ROBERT OGUNA 5TH APPLICANT
ALI NYOKA 6TH APPLICANT
STANLEY MWAKIRUNGU 7TH APPLICANT
NELSON KIMORI 8TH APPLICANT
GEORGE KWINGA WAMBUA 9TH APPLICANT
DAVID M. MENGO 10TH APPLICANT
SAID KOI NGASHO 11TH APPLICANT
JACKAN NGAO KILETA 12TH APPLICANT
GABRIEL BAYA 13TH APPLICANT
PETER MWALIMO 14TH APPLICANT
RAPHAEL OBORE 15TH APPLICANT
PETER MWARUMBA 16TH APPLICANT**

AND

SALEH SAID SHERMAN RESPONDENT



AND

YAKUB SHABAN KASSIM INTERESTED PARTY

AND

OMAR SALEH SHERMAN INTENDED INTERESTED PARTY

RULING

1. The interested party and intended interested party, moved the court through the notice of motion dated 17th February 2025 seeking for the following orders:

- “1. That the Applicant Omar Saleh Sherman be joined as an interested party in this suit.
2. That this Honourable Court upon grant of Order I above be pleased to declare this suit as null and void for having been filed against a dead person and issue an Order the same be struck out.
3. That the costs of this application be provided for.”

The application is based on the six (6) grounds on its face and supported by undated affidavit of Omar Saleh Sherman, intended interested party, in which he inter alia deposed that he is one of the administrators of the estate of the late Saleh Said Sherman, who is sued as the respondent, and who died on 1st April 1972; that the grant of letters of administration was issued in Mombasa High Court Succession Cause No. 375 of 2009; that as the respondent had died on 1st April 1972, the proceedings and the herein are a nullity ab-initio and cannot be salvaged by substitution; that the application should be allowed as prayed.

2. On their part, the applicants filed their notice of motion dated the 17th March 2025 seeking for the following orders:

- a. “Spent.
- b. That one Mr. Oman Swaleh Sherman, Hamad Mohamed Kassim and Awadh Swaleh Said Sherman be joined and or be substituted for Saleh Said Sherman also known as Swaleh Nguru (deceased).
- c. That, the suit against Swaleh Said Sherman also known as Swaleh Nguru be withdrawn or being non suited be left to rest.
- d. That the court do grant order(s) or relief(s) it deems fit and expedient to meet the ends of justice.
- e. That the costs of this application be provided for.”

The application is premised on the eight (8) grounds on its face and supported by the affidavit of Wilson Kahindi Karisa, the 1st applicant, sworn on 17th March 2025, inter alia deposing that at the time of filing the proceedings, title at the lands registry for plot 777/II/MN (Original 207/2) was still in the name of the late respondent; that in the absence of digital records and with due diligence, nobody would have known the legal representatives of the late respondent; that the former President had more than 25 years ago directed that the suit property be sold and given to the residents at Spark and Majengo



areas and by then no administrators had been appointed; that Article 159(2)(d) of *the Constitution* and Order 2 Rule 14 of the Civil Procedure Rules provides that no technical objection may be raised to any pleadings on the grounds of technicalities, and they will be greatly prejudiced if their suit is struck out as they might be forced to file fresh suits; that it is only fair, just and equitable that their application be allowed.

3. The learned counsel for the applicants and the intended interested parties filed their submissions dated 10th April 2025 and 20th June 2025 respectively, which the court has considered.
4. The issues for the court's determinations are as follows:
 - a. Whether the respondent had already died by the time this suit was filed, and if so, what order should be issued.
 - b. Whether applicants' suit can be salvaged through substitution.
 - c. Who bears the costs in each of the two applications?
5. The court has carefully considered the grounds on both applications, affidavit evidence, submissions by the parties' learned counsel, the pleadings so far filed and come to the following determinations:
 - a. The applicants filed this suit through the originating summons dated the 23rd February 2024, against Saleh Said Sherman, the respondent. The originating summons was amended on the 25th September 2024 adding Yakub Shaban Kassim as the interested party. It has since come to light through the deposition of Omar Saleh Sherman, the intended interested party, through the supporting affidavit to the application dated 17th February 2025 for joinder and striking out of the suit, that Saleh Said Sherman, the respondent had died on 1st April 1972. The deposition that the said respondent had died on 1st April 1972, has not been challenged by the applicants. Indeed, the applicants have through their application dated 17th March 2025 confirmed the respondent was deceased by the time they filed the originating summons, and hence their prayer to substitute.
 - b. In the case of *Manyange (Deceased) versus TG (Minor suing through her mother and next friend WMG) (Civil Appeal E005 of 2022) [2024] KEHC 1083 (KLR) (7 February 2024) (Ruling)*, which quoted with approval the Indian case of *C. Muttu versus Bharath Match Works AIR 1964 Kant 293*, the court observed as follows:

“If he (defendant) dies before the suit and a suit is brought against him in the name in which he carried on business, the suit is against a dead man and it is a nullity from its inception. The suit being a nullity, the writ of summons issued in the suit by whomsoever accepted is also a nullity. Similarly, an order made in the suit allowing amendment of plaint by substituting the legal representative of the deceased as the defendant and allowing the suit to proceed against him is also a nullity. It is immaterial that the suit was brought bona fide and in ignorance of the death of such a person.”

The applicants have through their application dated 17th March 2025 and their submissions argued that Order 24 Rule 4 (4) of the Civil Procedure Rules has provided for substitution of sole defendant who was deceased. However, the court finds the said provision is clear and expressly operates where the Defendant dies during the pendency of the suit and not before the filing of the same.



- c. The fact that this suit was admittedly, filed against a dead respondent is to say the least, a nullity ab initio, and according to the decision in the case of Mac Foy versus United Africa Co. Ltd (1961) ALL ER 1169, the suit commenced through the amended originating summons dated 25th September 2024 is for striking out. Therefore, the notice of motion dated the 17th March 2025 is without merit and is dismissed with costs.
 - d. That in view of the finding in (c) above, I find the notice of motion dated 17th February 2025, to be with merit. The prayer for the intended interested party, to be joined as the 2nd interested party is allowed. That further, prayer (3) is also allowed and this suit is declared null and void for having been filed against a dead person, and the same be struck out with cost.
 - e. That as the interested party and the 2nd interested party are successful in their application, they are in terms of section 27 of Civil Procedure Act chapter 21 of Laws of Kenya entitled to costs.
7. From the foregoing conclusions on the two applications, the court finds and orders as follows:
- a. The applicants notice of motion dated the 17th March 2025 is without merit and is dismissed with costs.
 - b. The interested party and intended interested party application dated the 17th February 2025 has merit and is allowed with costs in the following terms;
 - i. That the intended interested party/applicant is joined in this proceeding as the 2nd interested party.
 - ii. That the suit commenced through the amended originating summons dated 25th September 2024 against a deceased respondent and 1st Interested Party is hereby struck out with costs.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 22ND DAY OF OCTOBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Applicants : Mr. Gichana

Respondent : No Appearance .

Interested Parties : M/s Nyaga For Kemunto

Kalekye-court Assistant.

S. M. Kibunja, J.

ELC MOMBASA.

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