



Kamau v Kariuki t/a Jomill Afritimmer & 2 others (Environment & Land Case E014 of 2022) [2025] KEMC 83 (KLR) (6 May 2025) (Ruling)

Neutral citation: [2025] KEMC 83 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
ENVIRONMENT & LAND CASE E014 OF 2022
PA NDEGE, SPM
MAY 6, 2025**

BETWEEN

STEPHEN KARIUKI KAMAU PLAINTIFF

AND

JOEL KAMAU KARIUKI T/A JOMILL AFRITIMBER 1ST DEFENDANT

CO-OPERATIVE BANK OF KENYA LIMITED 2ND DEFENDANT

JOGEDAH AUCTIONEERS 3RD DEFENDANT

RULING

1. The plaintiff herein has been confirmed to be deceased. The plaintiff's counsel on record informed the court that the plaintiff passed on sometime in January 2024. An affidavit of service sworn at Nakuru on 6th February 2024 by Violet Makori, a court process server confirmed the death. Death in civil proceedings can be proved through sworn affidavit which in this case has been corroborated by the plaintiff's counsel utterances.
2. On abatement, Order 24 rule 3(1) of the Civil Procedure Rules 2010 provides that:

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.
3. Further, rule 3(2) provides that:

Where within one year no application is made under sub rule (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.

4. The Court of Appeal in the case of Rebecca Mijide Mungole & another -vs- Kenya Power & Lighting Company Ltd & 2 others [2017] eKLR comprehensively explained the procedure and the sequence to be followed in the following words: -

Speaking generally, by operation of the law, a suit will automatically abate where a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues if no application is made within one year following his death. According to rule 3(2) the defendant is only required to apply for an award of costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

5. But as was observed in Said Swailem Gheithan Saanum v Commissioner of Lands (sued through the Attorney General) & 5 Others Mld Civil Appeal No 16 of 2015 eKLR, the fact of abatement has to be brought to the notice of the court, proved and accordingly recorded in order for the defendant to apply for costs. It means that even though the legal effect of abatement may have already taken place, for convenience, an order of the court is necessary for a final and effectual disposal of the suit.
6. It is then, guided by the above reasoning, that this honourable court finds it necessary to make a formal pronouncement on the status of this suit following the death of the plaintiff. The plaintiff, Stephen Kariuki Kamau, having been confirmed deceased as of January 2024, and no application having been made within the statutory period of one year as provided in Civil Procedure Rules Order 24 rule 3(1) as read with Order 24 rule 3(2), the suit herein stands abated by operation of law, each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 06TH DAY OF MAY 2025

HON ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Plaintiff's Counsel: N/A

Defence counsel: N/A

1st Defendant: N/A

