



**Kibogo v Basalim & another; Basalim & another (Interested Parties) (Land Case (Originating Summons) 8 of 2020) [2025] KEELC 7531 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7531 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
LAND CASE (ORIGINATING SUMMONS) 8 OF 2020  
EK MAKORI, J  
OCTOBER 29, 2025**

**BETWEEN**

**KATANA BIKANGA KIBOGO ..... PLAINTIFF**

**AND**

**SAID ALI BASALIM ..... 1<sup>ST</sup> DEFENDANT**

**THE REGISTRAR OF TITLES KILIFI ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**ALI SAID BASALIM ..... INTERESTED PARTY**

**FAHMI SAID ALI BASALIM ..... INTERESTED PARTY**

**RULING**

1. The interested parties' notice of motion application dated November 15, 2024, aimed to have the applicants joined as interested parties in this suit, and this request was granted by consent. However, the interested parties now seek to have this suit struck out because it was filed against a deceased defendant.
2. This forms the basis of their application and is the issue I will address for the determination of this case, along with the related costs.
3. The application was canvassed through written submissions. I acknowledge receipt of submissions from Mr. Shujaa, learned counsel for the interested parties and applicants, and Mr. Kaingu, learned counsel for the plaintiff and respondents, with appreciation, as they helped address the issues at hand.
4. The applicants in paragraphs 2 to 7 of the supporting affidavit argue that this lawsuit was filed against the 1st defendant, Said Ali Basalim, who, according to the applicant's statement, died on January 20, 2008, as shown in the attached affidavit exhibit 2.



5. It is argued that bringing this suit on February 5, 2020, was against a deceased person, and therefore, the suit as it stands is a nullity.
6. Conversely, the plaintiff argues that this suit was filed on February 5, 2020, against the defendant, seeking an order that the plaintiff/respondent, who has lived on the defendant's land known as Gede/Mijomboni/511 since 1995, has acquired title to the property adversely to the registered owner, Said Ali Basalim.
7. The plaintiff, in support of his OS dated January 31, 2020, which was amended on January 25, 2021, deposed in his Supporting Affidavit at paragraph 16 as follows: "That the last time Said Ali Basalim, the registered owner of the suit land herein, came to the property was sometime in 1998." It follows, therefore, that at the time of filing this suit, the plaintiff did not know of the demise of the defendant.
8. The plaintiff relied on the certificate of search for the suit property from Kilifi Lands Office dated August 22, 2017, which clearly indicated that the registered owner of the suit property was Said Ali Basalim.
9. The plaintiff states that through his attorneys of record, he made several attempts via the Process Server to serve the Summons on the 1st defendant at his Nyali residence, but these attempts were unsuccessful. Consequently, a Notice of Motion dated November 28, 2022, was filed, requesting court permission to serve the defendant through substituted service. On March 9, 2023, the court granted authorization to serve the 1st Defendant by substituted service. On Wednesday, January 17, 2024, a Notice was published in the Daily Nation, which was a valid method of serving the summons on the Defendant. The interested parties had the opportunity to apply to the court to be added as parties. As of October 4, 2024, the plaintiff/respondent obtained an extract of the Green Card for the suit property, which remains registered in the name of Said Ali Basalim.
10. Furthermore, the plaintiff states that although the 1st and 2nd interested parties are administrators of the Defendant's estate, they are not the registered owners of the suit property. The registered owner of the property known as Gede/Mijomboni/511 remains Said Ali Basalim, the defendant in this case.
11. The plaintiff asserts that the 1st and 2nd interested parties should have applied to be substituted as the main defendants rather than being joined as interested parties. The plaintiff's claim targets the registered owner of the suit property, Gede/Mijomboni/511, not the 1st and 2nd interested parties; however, as estate administrators, they are entitled to respond to the Plaintiff's claim in the OS. Nothing prevents them from filing a response.
12. From the foregoing, it is not disputed that the 1st defendant died a decade ago when this suit was filed. I agree with Mr. Shujaa that a suit filed against a deceased person cannot be maintained and is only subject to being struck out.
13. I am persuaded by the decision cited by Mr. Shujaa in *Viktar Maina Ngunjiri & 4 others v Attorney General & 6 others* [2018] KEHC 1972 (KLR). Where Mbogholi J. (as he then was) held as follows concerning suits originated against deceased persons:

"It is common ground that the 7<sup>th</sup> defendant was not alive when the suit was filed against him. It is also inconceivable how a party who is deceased can instruct counsel and that counsel takes over instructions from a non-existent person. It follows therefore any action including the filing of the plaint, the extraction of the summons; the entering of appearance and filing of the defence were a nullity. The cases cited by counsel for the plaintiffs include, *Benjamin Leonard Mc foy v United Africa Company Limited* [1961] All ER 1169. In that case the court stated as follows,



“If an Act is void, then it is in Law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

This is exactly what the instructing party to the counsel now on record for the deceased person and or his estate is attempting to do. In the words of the cited case above this is an attempt to place something on nothing and expect it to retain ground. This cannot happen.”

14. The suit against the 1st defendant was filed long after his death, making it a nullity. The argument that the estate should join and defend this suit is not valid.
15. Consequently, the motion dated November 15, 2024, is hereby granted, and the current suit is hereby struck out with costs.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 29<sup>TH</sup> DAY OF OCTOBER 2025.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Kaingu for the Plaintiff

Happy: Court Assistant

In the absence of:

Mr. Shujaa for the Interested Parties

