



**Gichugu & another (t/a Vinco Footware) v Barclays Bank of Kenya Limited (Civil Case 212 of 2015) [2025] KEHC 15147 (KLR) (Commercial and Tax) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15147 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 212 OF 2015  
F GIKONYO, J  
OCTOBER 23, 2025**

**BETWEEN**

**STANLEY MWANGI GICHUGU ..... 1<sup>ST</sup> PLAINTIFF**

**BILHA WARUGURU MWANGI ..... 2<sup>ND</sup> PLAINTIFF**

**T/A VINCO FOOTWARE**

**AND**

**BARCLAYS BANK OF KENYA LIMITED ..... DEFENDANT**

**RULING**

1. The notice of motion dated 6th August 2024 is seeking substitution of the deceased plaintiff Stanley Mwangi Gachugu with Edward Mwai Mwangi, the administrator of his estate.
2. The application is made primarily under Order 24 Rule 3 (1) and (2) of the Civil Procedure Rules.
3. The application is premised on the grounds on its face and the supporting affidavit sworn by Edward Mwai Mwangi on 6th August 2024 and written submissions dated 8th December 2024.
4. The main grounds are that there is need for substitution as: -
  1. The plaintiff passed away on 30th August 2021.
  2. The court's final decision was issued on 6th January 2023.
  3. The letters of administration ad litem were issued on 17th November 2023.
5. The applicant relied on the following cases: -
  1. Boraya v Nyamwange & another, Ondoro (Interested Party) [2024] KEELC 13203 (KLR)



2. Agnes Wanjiku Wang'ondy v Uchumi Supermarkets, Nairobi HCCC Civil Appeal No. 137 of 2002 (2008) KEHC 2233 (KLR)
3. Stanley Kangethe Kinyanjui v Tony Ketter & Others [2013] KECA 378 (KLR)

## **Response**

6. The application is opposed by the defendant/ respondent through a replying affidavit sworn by its legal counsel, Michael Massawa on 28th October 2024 and written submissions dated 18th February 2025.
7. The core contentions are: -
  1. The suit abated on 30th August 2021 since there was no substitution within a year of the plaintiff's demise.
  2. Abatement of the suit is the subject of Nairobi Civil Appeal No. E101 of 2023.
  3. After the plaintiff's demise, the plaintiff's counsel appeared in court 22 times without seeking substitution.
  4. Application for letters of administration ad litem was issued on 7th November 2023, more than 2 years after the plaintiff's demise.
  5. The present application was filed 9 months after the issuance of the letters of administration ad litem.
  6. There has been no explanation for the inordinate delays and no application for leave to substitute the plaintiff out of time.
8. The respondent relied on the following cases: -
  1. Rebecca Mijide Mungole & Cleophas Ongau Omwenga v Kenya Power & Lighting Company Ltd, Atlas Copco Eastern Africa Ltd & Falcon Signs Ltd [2017] KECA 544 (KLR)
  2. CKM v ENM & another [2024] KECA 293 (KLR)
  3. Kenya Farmers Co-Operative Union Limited v Charles Murgor (Deceased) T/A Kaptabei Coffee Estate [2005] KEHC 3370 (KLR)
  4. Subbarayudu v Ramadasu (1921) ILR 45 M 872

## **Analysis and Determination**

9. The issues before the court are: -
  1. Whether the application offends the principle of sub judice
  2. Whether the suit abated.
  3. Whether the application for substitution is merited.

## **Sub judice**

10. The respondent asserted that it has appealed against the judgment delivered by this court on 23rd January 2023. It also asserted that the judgment is now subject of appeal in Nairobi Civil Appeal No. E101 of 2023 and that one of the grounds of appeal is that the judgment is untenable as the suit had abated.



11. The respondent contended that the present application has been brought in bad faith as it seeks determination of issues that are before the Court of Appeal.
12. The respondent also contended that the present application is incompetent and an invitation to embarrass the Court of Appeal that will hear the appeal.
13. The applicant took a different view of the matter. It was asserted that the suit did not abate upon the plaintiff's death because an interim judgment had been given before his death. It was submitted that the abatement of the suit cannot be raised before the appellate court. It opined that the respondent ought to have raised the issue of abatement of the suit before the High Court and challenged the judgment if it believed that it was invalid.
14. The applicant further submitted that the respondent's actions of appealing the judgment, seeking stay of execution and participating in the taxation proceedings demonstrate that the suit was alive.
15. The respondent exhibited a copy of the memorandum of appeal dated 24<sup>th</sup> January 2023. Ground 5 of the appeal is that: -

“In any case, the suit abated on 30<sup>th</sup> August 2021 and there being no application for substitution being made within 1 year of demise.”

16. Thus, the court is satisfied that the question of the abatement of the suit is pending hearing and determination before the Court of Appeal.
17. Section 6 of the *Civil Procedure Act* provides that: -

“6. Stay of suit

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

18. The rationale for the above is to prevent conflicting decisions over an issue. Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR

### **Conclusion**

19. The court is satisfied that the pending appeal is between the same parties, before a court of competent jurisdiction and over the same issue raised through the present application. The application therefore offends the principle of sub judice.
20. The law requires that proceedings which are sub judice be stayed pending the outcome of the earlier proceedings.
21. Thus, in the upshot, the application dated 6th August 2024 is stayed pending the determination of Nairobi Civil Appeal No. E101 of 2023.

**DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025.**



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**F. GIKONYO M**

**JUDGE**

In the presence of:

Kiplangat for defendant

Ochieng for Plaintiff

CA- Kinyua

