



Aloka v Mukoyani; Aloka & 5 others (Subsequent Party); Sirengo & another (Applicant) (Environment and Land Case 254 of 2016) [2025] KEELC 7762 (KLR) (5 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7762 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE 254 OF 2016
A NYUKURI, J
NOVEMBER 5, 2025**

BETWEEN

MARIA NYONGES ALOKA PLAINTIFF

AND

LAZARUS SIRENGO MUKOYANI DEFENDANT

AND

ALEX ALOKA SUBSEQUENT PARTY

VIOLET NASIMIYU LUKAMASIA SUBSEQUENT PARTY

LUKERI ALOKA SUBSEQUENT PARTY

JONES NASIMIYU ALOKA SUBSEQUENT PARTY

LEONARD LUKAMASIA SUBSEQUENT PARTY

GEOFREY LUKAMASIA SUBSEQUENT PARTY

AND

FREDRICK WAMALWA SIRENGO APPLICANT

BENJAMIN BARASA WAFULA APPLICANT

RULING

Introduction

1. Before court is a chamber summons dated 8th August 2024 filed by Fredrick Wamalwa Sirengo and Benjamin Barasa Wafula who refer to themselves as petitioners/ applicants, seeking orders that the deceased defendant be substituted by the applicants while the deceased plaintiff be substituted by



the persons referred to as subsequent parties. They also sought the arrest of the alleged subsequent parties for allegedly chasing them from “registering their intestate claims on the 3rd day of the deceased plaintiff”. Further, that the OCS Matete Police Station be directed to effect service as the applicants and the village elder were chased by the alleged subsequent parties, who tore the area chief’s letter and refused to attend the chief’s arbitration meeting.

2. The application is premised on the 2nd applicant’s affidavit dated 8th August 2024. The applicants’ case is that both the plaintiff and defendant herein are deceased and the applicants have obtained limited grant ad litem for the estate of the deceased defendant. That the 1st to 5th subsequent parties have encroached on and intermeddled with the suit property in contempt of the court’s ruling issued by the probate court. That if the applicants and the 1st to 5th subsequent parties are not joined to this suit; the applicants shall suffer irreparably.
3. The application was opposed. Counsel for subsequent parties filed grounds of opposition dated 26th May 2025. He stated that there is no legal provision for subsequent parties and that the application was brought under wrong legal provisions. That the plaintiff is deceased and there has been no substitution. That the alleged subsequent parties are not parties herein and have no grant of representation in regard to the plaintiff’s estate. That the applicants have not substituted the defendant herein and that the application is frivolous and vexatious.
4. Parties filed their respective submissions in support of their positions. On record are the applicants’ submissions dated 27th February 2025 and the subsequent parties’ submissions dated 14th July 2025; both of which the court has duly considered.

Analysis and determination

5. Having carefully considered the application, grounds of opposition and submissions, the only issue that arise for determination is whether the applicants deserve the orders sought.
6. The court has power to grant orders for substitution of a deceased party whether a plaintiff or defendant where the cause of action survives the death of such party, by joining the personal representative of the party’s estate. Order 24 Rules 1 to 4 provide as follows;

Abatement by party’s death if right survives [Order 24, rule 1]

1. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues.
2. Procedure where one of several plaintiffs or defendants dies and right to sue survives [Order 24, rule 2]

Where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff [Order 24, rule 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.

4. Procedure in case of death of one of several defendants or of sole defendant [Order 24, rule 4]

- 1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant 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 defendant to be made a party and shall proceed with the suit.
- 2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.
- 3) Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.

7. In the instant case, the record shows that this suit was struck out for being res judicata on 24th July 2018. Therefore, there is no suit and hence there is no survival of the cause of action as the suit herein was struck out, to warrant substitution. Therefore, there is no basis for joinder of the applicants herein as substitutes for the deceased defendant or the subsequent parties as substitutes of the deceased plaintiff. In addition, the alleged subsequent parties are not holders of grant of representation in regard to the plaintiff's estate and therefore are not the lawful persons to substitute the plaintiff, if there had been an opportunity for substitution. The dates stated in the application herein, whereon the applicants allege that subsequent parties were in contempt of court orders issued on 19/2/1993; 26/2/2014; 27/07/2016; 08/02/2016; 24/07/2018 and 14/08/2018 are dates where no orders were ever issued in this case. Most of those dates are dates before the filing of the suit herein. If the applicants are referring to orders issued in another matter, seeing that they have made reference to the Probate court, this court has no power to deal with matters before the Probate court.
8. The applicants sought that the OCS Matete Police Station to effect service, yet no legal provision was cited allowing service of the court process to be effected by a police officer in the circumstances of this case.
9. The suit herein having been struck out, and no positive order having been made, the applicants have not given any basis or justification for the arrest of anyone, including the 1st to 5th alleged subsequent



parties. No orders exist in this matter requiring obedience of the subsequent parties hence the issue of contempt as alleged by the applicants does not arise.

10. Ultimately, I find no merit in the chamber summons dated 8th August 2024, which I dismiss with costs to the listed subsequent parties.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 5TH DAY OF NOVEMBER, 2025

A. NYUKURI

JUDGE

In the presence of;

Mr. Fredrick Wamalwa sirengo 1st applicant in person

Mr. Benjamin Wafula 2nd applicant in person

Court Assistant: Delphine

