



REPUBLIC OF KENYA



Iraki & another v Ndungu & 2 others (Environment and Land Case 767 of 2017) [2025] KEELC 7934 (KLR) (13 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7934 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 767 OF 2017**

JA MOGENI, J

NOVEMBER 13, 2025

BETWEEN

LIZA WAIRIMU IRAKI APPLICANT

AND

PETER IRAKI MWAURA PLAINTIFF

AND

MAGDALENE WANGUI NDUNGU DEFENDANT

AND

**SAMUEL NGUMBA NGARUIYA (BEING SUED AS THE
LEGAL REPRESENTATIVE OF LILIAN WAIRIMU NGARUIYA -
DECEASED) RESPONDENT**

AND

LAND REGISTRAR KIAMBU DEFENDANT

RULING

1. Before me for determination is the Notice of Motion dated 19 02 2025 brought under Sections 1A, 1B, 3A, *akn ke act 1924 3 Civil Procedure Act* 2010, Order 24 Rule 3 (2), Order 24 Rule 7 and Order 51 Rule 1 the Civil Procedure Rules 2010, the inherent Power of the Court and all other enabling provisions of the Law. The Applicant seeks for the following orders:
 - i. Spent.
 - ii. This Honorable Court be pleased to extend time for the substitution of the deceased 2nd Plaintiff with his personal representative.



- iii. Liza Wairimu Iraki (in her capacity as the administratrix of the Estate of the 2nd Plaintiff) be joined as a party to this suit.
 - iv. The suit herein be revived in accordance with the provisions of Order 24 Rule (7) of the Civil Procedure Rules.
 - v. The Order striking out the suit be set aside and the suit be reinstated.
 - vi. Liza Wairimu Iraki (in her capacity as the administratrix of the Estate of the 2nd Plaintiff be substituted as the 2nd Plaintiff.
 - vii. The costs of this application be in the cause.
 - viii. Such further and other orders that this Honorable Court may find fit and just to grant.
2. The said application is premised on the grounds set on its face as well as on the sworn Affidavit of Liza Wairimu Iraki the Applicant on 19 02 29025 to the effect that the 2nd Plaintiff in the suit herein died on 13 04 2021 before the determination of the suit.
 3. That on 16 03 2023 the suit was struck out for failure to substitute and that this was inadvertent since her previous Advocates did not explain to her the importance of substitution and the repercussions that may result from not substituting.
 4. She stated that she has obtained a Limited Grant ad Litem dated 19 03 2023 a copy which she annexed as 'LWA 13' and thus she filed this application to consider setting aside the orders dismissing this suit that were issued by this Court on 16 03 2023 and also she had sought for an order of extension of time to substitute and to reinstate this suit.
 5. That since the cause of action survived the death of the 2nd Plaintiff, the Applicant who is the spouse of the 2nd Plaintiff, desirous of proceeding with this suit, obtained Grant of Letters of Administration and subsequently filed this application.
 6. The Applicant deponed that the Respondent shall not suffer any prejudice if the same is allowed.
 7. The Application was opposed by the 2nd Respondent's Counsel John Wamiti Njagi vide a Replying Affidavit sworn on 17 03 2025 to the effect that it lacked merit and was an abuse of the Court process and further that the same was res judicata and that the Court ought not to aid the indolent. That further, the Applicant had not demonstrated a tenable reason for the inordinate delay in applying to revive the suit 4 (four) years after the passing away of the deceased 2nd Plaintiff and 3 years since the suit against him abated.
 8. The Court ordered for the application to be disposed of by way of written submissions, the Applicant filed their submissions dated 26 05 2025 and the 2nd Respondent filed theirs dated 3 06 2025.
 9. The Court has considered the submissions which are well researched and with legal authorities addressing the subject matter. The submissions rearticulate at great length what parties had espoused in the pleadings.

Determination .

10. I have considered the pleadings and submissions made by the parties herein. The issue is whether the suit that abated after the passing away of the deceased 2nd Plaintiff should be revived, and if so, whether the deceased Plaintiff should be substituted. Order 24 Rule 3 of the Civil Procedure Rules provides for the effect of death of one of several Plaintiffs or of sole Plaintiff. It states as follows:



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.

11. It is clear from the said provisions that a suit abates by operation of the law when no substitution is made within one year on the death of either a Plaintiff or Defendant. However, Order 24 Rule 7(2) of the Civil Procedure Rules gives the Court discretion to revive an abated suit if there is sufficient proof that the Applicant was prevented by any sufficient cause from continuing the suit. The said provision provides as follows:

“The Plaintiff or the person claiming to be the legal representative of a deceased Plaintiff or the trustee or official receiver in the case of a bankrupt Plaintiff may apply for an order to revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.”

12. The Court of Appeal in the case of *The Hon. Attorney General v The Law Society of Kenya & Another – Civil Appeal (Application) No. 133 of 2011* observed as follows as to the meaning of sufficient cause:-

“Sufficient cause or good cause in law means:-

“The burden placed on a litigant (usually by Court rule or order) to show why a request should be granted or an action excused.’ See *Black’s Law Dictionary*, 9th Edition, page 251.

Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubt in a Judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.”

13. In the instant application, the intended Plaintiff averred that following the death of her husband her then counsel did not advise her on need for substitution and being a lay person, she did not know it was important. Once she understood the importance of substitution, she made an application for a Limited Grant which she obtained and this enabled her file the application herein seeking reinstatement of the suit that was dismissed and following thereupon an extension of time for substitution.
14. Under Sections 1A and 1B of the *akn ke act 1924 3 Civil Procedure Act* Cap 21 Laws of Kenya, the Court is enjoined to foster and facilitate the overriding objective of the Act to render justice to parties in all civil proceedings in a just, expeditious, proportionate and affordable cost to the parties. Article 159 (2) (a) (b) (c) and (d) of *akn ke act 2010 constitution the Constitution* further underscores the role of the Court in the administration of Justice while Article 159 (2) (d) provides that justice shall be administered without undue regard to procedural technicalities.



15. These Constitution provisions when mirrored against Sections 1A and 1B of the *Kenya Constitution 1992* Civil Procedure Act, clearly enjoin the Courts to endeavor to do substantive justice to the parties without necessarily being shackled by procedural technicalities.
16. While it is true that the application was filed after the expiry of the stipulated period yet in my view and noting from the annexures herein attached, the fact that when the Applicant obtained a Grant of Letters of Administration on the 19 03 2023 and filed this application on the 19 02 2025, in my humble view is an indication that she was desirous to have this matter heard and determined.
17. Order 24 rule 3 (2) of the Civil Procedure Rules provides that the Court may extend time for good reason and as such, whether or not to extend time for a legal representative of the deceased Plaintiff to be made a party to a suit in place of such deceased after the expiry of the prescribed time is a matter that calls for the exercise of the discretion of the Court.
18. As noted in the Court proceedings, the deceased had not testified and closed his case. I am satisfied that the reason given by the Applicant in the present instance is good enough.
19. The 2nd Respondent raised the issue of this application being Res Judicata. For the Court to be able to ascertain whether or not the matter is Res Judicata, it will have to ascertain the facts as pleaded by the 2nd Defendant Respondent probing the Ruling made by this Court. A quick perusal of the Ruling by my sister Justice Kemei at paragraph 17 which the 2nd Respondent has highlighted shows that the Court was not shown the ad litem to enable the Applicant be substituted and also the Court stated that the suit had not been revived or reinstated.
20. The revival or reinstatement of the suit is a key factor in issuance of orders of extension of time to substitute. The Court pronounced itself on this matter and it could not issue orders where the suit was non-existent.
21. The Applicants' application is accordingly allowed and it is hereby ordered as follows:
 - i. The abated suit is herein revived, the Deceased 2nd Plaintiff Peter Iraki Mwaura is herein substituted by his legal representative Liza Wairimu Iraki the Applicant herein so as to enable the Court to determine the real issues in controversy between the parties.
 - ii. That Applicant be and is hereby granted leave to amend the pleadings accordingly, if need be and shall thereafter file and serve the same 21 days from the date of this Ruling.
 - iii. Costs of the application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 13TH DAY OF NOVEMBER, 2025 VIA MICROSOFT TEAMS.

.....

MOGENI J

JUDGE

In the presence of:

Mr. Mbogori for the 1st and 2nd Plaintiffs

1st Defendant – Absent

Mr. Wamiti Njagi for the 2nd Defendant



3rd and 4th Defendants – Absent

Mr. Melita – Court Assistant

