



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ITEN

ELCC SUIT NO. 58 OF 2022

**WILSON TANUI.....1ST PLAINTIFF/
RESPONDENT**

**AMOS KIPLAGAT.....2ND PLAINTIFF/
RESPONDENT**

**RICHARD KOMEN.....3RD
PLAINTIFF/RESPONDENT**

**(Suing as Officials of Kapkiagut Clan land Cheptebo
Group and on behalf of members of Kapkiagut clan)**

**SAMSON MAIYO.....4TH
PLAINTIFF/RESPONDENT**

**(Suing as Administrator of the estate of William
Kemboi)**

-Versus-

**JOSEPH MOGEN.....1ST
DEFENDANT**

**WILLIAM KIRUI.....2ND
DEFENDANT/RESPONDENT**

**NICHOLAS KIBII KIGEN.....
3RD DEFENDANT/RESPONDENT**

**WILSON KIMUGE.....4TH
DEFENDANT/RESPONDENT**

**MICHEAL KIPROTICH
KATAM.....5TH
DEFENDANT/RESPONDENT**

**KIBII BOIYO.....6TH
DEFENDANT/RESPONDENT**

**KIGEN CHEPKIYENG.....7TH
DEFENDANT/RESPONDENT**

**KIPKEMOI CHEMITEI
SIRMA.....8TH
DEFENDANT/RESPONDENT**

**TOMINING KIPYUK.....9TH
DEFENDANT/RESPONDENT**

**JOHN KOMEN.....10TH
DEFENDANT/RESPONDENT**

**MICHEAL CHERUIYOT....11TH
DEFENDANT/RESPONDENT**

**MICHEAL KANGOGO.....
12TH DEFENDANT/RESPONDENT**

**JOSEPH KIPLAGAT
KANGOGO.....13TH
DEFENDANT/RESPONDENT**

**MOHAMMED
TOROITICH.....14TH
DEFENDANT/RESPONDENT**

**LUKA KIPRUTO
KWAMBAI.....15TH
DEFENDANT/RESPONDENT**

-AND-

**MESHACK KIPLAGAT
KIPNGETICH.....
APPLICANT**

RULING

1. Before this court is a notice of motion application dated 7th October, 2025 brought under **Order 24 Rule 3, 7(2), Order 51** of the Civil Procedure Rules and **Section 1A, 1B** and **3 A** of the Civil Procedure Act seeking orders for revival of the suit and substitution of the 1st defendant with Meshack Kiplagat Kipngetich.
2. The application is premised on the grounds on its face and supporting affidavit of Meshack Kiplagat Kipngetich sworn on 7th October, 2025. He deposes that following the death of the 1st defendant in 2014, the suit against him abated but the cause of action survived; that he obtained letters of administration *ad litem* in Iten High

Court Family Miscellaneous No. 004 of 2025 on 30th June, 2025 for purposes of defending the suit in place of the 1st defendant.

3. Although the application is not opposed, I will proceed to consider it on merit.
4. The applicant has sought for revival of the suit and substitution of the 1st defendant with the applicant. The 1st defendant died on 22nd July, 2014 before this suit was filed herein on 20th January, 2021. From the death certificate annexed and marked as MKK-1, indeed the 1st defendant died on 22nd July, 2014.
5. It is trite Law that a dead person cannot be sued and if sued, the suit against the deceased person is invalid and a nullity from inception. In the case of **Naikuni v Naikuni & 7 others; Manyuele (Applicant) (Environment & Land Case 9 of 2023) [2025], Gacheru J.** faced with similar circumstances held;
“The Applicant has sought for the striking out of the suit herein against the 5th Defendant Seenka Ole Manyuele, who died on 4th January 2020, before the suit was filed herein on 9th November

2023. Indeed, from the annexure MPM1, the 5th Defendant herein Seenka Ole Manyuele, died on 4th January 2020, long before the suit was filed on 9th November 2023.

It is trite that a dead person cannot be sued, and technically, a suit filed against a deceased person is invalid and a nullity from inception. This court was referred to the case of Manyange (Deceased) v TG (Minor suing through her mother and next friend WMG) (Civil Appeal E005 of 2022) [2024] KEHC 1083 (KLR) (7 February 2024) (Ruling), which quoted with approval the Indian case of C. Muttu v. Bharath Match Works AIR 1964 Kant 293, where the court observed as follows;

“If he (defendant) dies before the suit and a suit is brought against him in the name in which he carried on business, the suit is against a dead man and it is a nullity from its inception. The suit being a nullity, the writ of summons issued in the suit by whomsoever accepted is also a nullity. Similarly, an order made in the suit allowing amendment of plaint by substituting the legal

representative of the deceased as the defendant and allowing the suit to proceed against him is also a nullity. It is immaterial that the suit was brought bona fide and in ignorance of the death of such a person.”

It is evident that the 5th defendant herein was not alive when the suit was filed against him. Therefore, the suit against him is a nullity from inception, and a nullity cannot be rectified through amendments or substitution. The above position was submitted by the Applicant who relied on the case of Benjamin Leonard Mc foy v. United Africa Company Limited [1961] All ER 1169, wherein the court held;

“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.”

The suit against the 5th Defendant being a nullity, then it same is bad in law, and is automatically null and void, and there is nothing that can be done to salvage it for now. There being no doubt that the 5th Defendant was dead at the time of filing this suit, the said deceased Defendant cannot be substituted to breathe life into the suit.....

On whether the 5th Defendant who is deceased can be substituted, is trite that technically, the case herein was non-suited ab initio, as a dead person cannot be sued. Courts have dealt with this issue of whether or not such suit can be cured by a substitution, and have severally arrived at a verdict, that it cannot.....”

6. Similarly in this case, by the time the suit was filed in 2021, the 1st defendant was deceased. The suit is therefore a nullity against the 1st defendant and substitution cannot breathe life into a suit which is a nullity.

7. Consequently, I find the application devoid of merit
and dismiss it with no orders as to costs as the
application was not defended.

8. Orders accordingly.

**Dated, signed and delivered at Iten this 19th day of
November, 2025.**

**L. N. WAITHAKA
JUDGE**

Ruling delivered virtually in the presence of:-

Ms. Kemboi for the 1st Defendant/Applicant

N/A for the Plaintiff/Respondents

N/A for the 2-5th Defendants

Court Asst.: Christine