



Tuva v Mwangovya (As personal representative Of The Estate of Joseph Paul Mwangovya) (Enviromental and Land Originating Summons 314 of 2017) [2025] KEELC 7715 (KLR) (6 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7715 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 314 OF 2017
YM ANGIMA, J
NOVEMBER 6, 2025

BETWEEN

SAMSON SULUBU TUVA PLAINTIFF

AND

MAUREEN MWANGOVYA (AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOSEPH PAUL MWANGOVYA) DEFENDANT

RULING

1. By a notice of motion dated 12.05.2025 filed pursuant to Order 2 Rule 15 (1) (d) of the Civil Procedure Rules, Sections 1A, 3A, 63 (e) of the *Civil Procedure Act* (the Act) and all other enabling provisions of the law, the defendant sought to strike out the suit for having been commenced against a deceased defendant.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Maureen Mwangovya on 12.05.2025. It was contended that the suit was filed against a deceased defendant, Joseph Paul Mwangovya, thereby rendering it a nullity. It was argued that where a suit is a nullity the court has no discretion but to terminate the proceedings.
3. The plaintiff opposed the application vide a replying affidavit sworn by Samson Sulubu Tuva on 22.05.2025. It was contended that the application was res judicata on account of an earlier application dated 19.12.2022 in which the defendant sought, inter alia, to strike out the suit as a nullity. It was further contended that the court delivered a ruling on the said application on 25.07.2023 ordering Maurine Munyazi Mwangovya to represent the estate of Joseph Paul Mwangovya. The plaintiff argued that the said substitution and amendment of the originating summons meant that the suit between him and Joseph Paul Mwangovya no longer exists and that the substitution and amendment created a new suit between him and the defendant. The court was urged to disallow the application as prayed.



4. The defendant responded to the plaintiff's replying affidavit by filing a further affidavit sworn by Maureen Mwangovya dated 05.06.2025. It was contended that the court in the ruling dated 25.07.2023 did not dwell on the question of whether the suit was a nullity for being brought against a deceased person hence this application cannot be said to be a res judicata. The defendant argued that the court order for substitution and joinder of the legal representative of the estate did not breathe life into a suit that was a nullity at its inception.
5. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The defendant filed submissions dated 06.06.2025 in support of her application while the plaintiff filed his undated submissions in opposition to the application.
6. The court has perused the application, the response thereto and the material on record as well as the submissions made by counsel. The court is of the view that the following key issues arise for determination herein:
 - a. Whether the suit ought to be struck out for being a nullity.
 - b. Who shall bear the costs of the application.
7. On the first issue, it is trite law that a suit against a deceased person is a nullity from inception. In this case it is not in doubt that Joseph Paul Mwangovya died on 20.06.2012. Five years later, the plaintiff filed an originating summons dated 29.08.2017 seeking to acquire by way of adverse possession Plot No. MN/I/9112 registered in his name. It is clear to the court that Joseph Paul Mwangovya was not alive when the suit was filed against him. The orders of the court directing that Maurine Mwangovya be substituted as the personal representative of the deceased did not in any way revive the suit which was a nullity from its inception.
8. The deceased died before the suit was filed and the representative of the estate of the deceased could not take over a nullity. The court in *Viktar Maina Ngunjiri & 4 Others v Attorney General & 6 others* [2018] eKLR cited with the following Indian persuasive decisions,

“In the Indian case of *C. Muttu v. Bharath Match Works* AIR 1964 Kant 293 the court observed,

“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.”

In yet another Indian Case of *Pratap Chand Mehta v Chrisna Devi Meuta* AIR 1988 Delhi 267 the court citing another decision observed as follows,

“if a suit is filed against a dead person then it is a nullity and we cannot join any legal representative; you cannot even join any other party, because, it is just as if no suit had been filed. On the other hand, if a suit has been filed against a number of persons one of whom happens to be dead when the proceedings were instituted, then the proceedings are not null and void but the court has to strike out the name of the party who has been wrongly joined. If the case has been instituted against a dead person and that person happened to be the



only person then the proceedings are a nullity and even Order 1 Rule 10 or Order 6 Rule 17 cannot be availed of to bring about amendment.”

9. Regarding the issue of costs, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. However, since the suit was incompetent for being brought against a deceased defendant the latter is not entitled to costs.
10. The upshot of the foregoing is that the court finds and holds that the plaintiffs’ application dated 09.06.2025 is merited. Accordingly, the court shall make the following orders for disposal thereof;
 - a. The entire suit is hereby struck out for being a nullity.
 - b. There shall be no order as to costs.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 6TH DAY OF NOVEMBER 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

N/A for the plaintiff

Mr Mwakisha for the defendant

