

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KITALE**  
**ELC NO. 184 OF 2016**

**MICHAEL FRANCIS CHEMONGES KITIYO-----**

**1<sup>ST</sup> PLAINTIFF**

**THE REGISTERED TRUSTEES  
BIBLE CHRISTIAN FAITH CHURCH-----**

**2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**STEPHEN LOWASKOU MWOI-----1<sup>ST</sup>**

**DEFENDANT**

**THE CHIEF LAND REGISTRAR-----2<sup>ND</sup>**

**DEFENDANT**

**THE ATTORNEY GENERAL-----3<sup>RD</sup>**

**DEFENDANT**

**JACOB CHERIREI KITIYO-----INTENDED 1<sup>ST</sup>**

**PLAINTIFF/APPLICANT**

**RULING**

1. Through an application dated **4/11/2025**, the court is asked to reinstate for hearing on merit the 1<sup>st</sup> plaintiff's suit, to substitute him, now deceased, with Jacob Cherirei Kitiyo. The grounds are set out

on the face of the application and in a supporting affidavit sworn on **4/11/2025**, by Jacob Cherirei Kitiyo.

- 2.** The deponent contends that he is the administrator of the estate of the 1<sup>st</sup> plaintiff, who passed away on **25/8/2024** during the pendency of the suit. He has attached a copy of the limited grant of letters of administration *ad litem* dated **4/6/2025** and a death certificate dated **8/10/2024**, as annexures marked **JCK-(1)** and **(2)**, respectively. The applicant deposes that one year has already lapsed, hence the suit abated.
- 3.** The applicant deposes that when his father passed on, the lawyer representing him was not notified or aware of the death. Similarly, the deponent avers that he did not know the lawyer, and only after investigations by the driver, did they confirm the engagement of the current law firm in **April 2024**, by their late father.
- 4.** Again, the applicant deposes that the file was not readily available at the registry, for it was in the judge's chambers for a pending ruling, thus impossible to peruse as per the letter dated **28/3/2024**, marked **JCK-(3)**.

5. The applicant deposes that he was informed by the advocate that he was meant to meet his late father on **23/8/2024** to issue clear instructions, especially the rulings delivered on **12/4/2024** and **21/5/2024**, but unfortunately fell ill and passed on on **25/8/2024**.
6. The applicant avers that the delay in taking action was occasioned by the fact that, as a family, they had to build a consensus on the way forward, on many issues, since their late father was polygamous and was also busy at work as per an annexed copy of the passport marked **JCK-(4)**.
7. The applicant deposes that the court should accommodate the estate to avoid the beneficiaries being visited by some instabilities, since they are actually vulnerable. The applicant deposes that the suit was slated for mention on **6/11/2025**, for directions on the hearing of the suit regarding the 2<sup>nd</sup> plaintiff.
8. The deponent says that the abatement of the suit would adversely affect not only the 1<sup>st</sup> plaintiff's estate, but also the 2<sup>nd</sup> plaintiff, since the 1<sup>st</sup> plaintiff had authorised the 2<sup>nd</sup> plaintiff to plead by

an authority dated **16/12/2016** attached as **JCK-(5)**.

- 9.** The deponent states that all parties, save for the 3<sup>rd</sup> defendant, have already called their witnesses, the deceased had testified, and the inclusion will not derail the suit or occasion any prejudice to the defendants.
- 10.** Similarly, the deponent avers that on **4/12/2024**, the defendants' case was re-opened and the 2<sup>nd</sup> defendant's witness recalled for cross-examination, hence there will be miscarriage of justice if the application is not allowed, and the applicant allowed to cross-examine, not only the 1<sup>st</sup> plaintiff's witness but also the 2<sup>nd</sup> plaintiff who rides on the 1<sup>st</sup> plaintiff's case having donated authority to plead. Equally, the applicant deposes that he is willing to abide by any conditions issued by the court on the way forward.
- 11.** The court record shows that this suit was filed on **20/12/2016**, and after many attendances, the 1<sup>st</sup> plaintiff testified on **18/11/2021**, and thereafter, the plaintiffs' case was closed on **22/7/2022**.
- 12.** The 1<sup>st</sup> defendant testified and closed his case, whereafter the 2<sup>nd</sup> and 3<sup>rd</sup> defendants called their

first witness, who was stood down. By a ruling dated **21/5/2024**, the court declined to reopen the plaintiffs' case at the defence stage and fixed the further defence hearing on **30/10/2024**.

- 13.** Before this, the court had also delivered another ruling on **12/4/2024**, which elicited a notice of appeal dated **22/4/2024**. There is no evidence that the 1<sup>st</sup> plaintiff appealed against the ruling of **21/5/2024**. The said ruling at paragraphs 3 and 4, related to evidence by PW2 on behalf of the defunct Commissioner of Lands and the adduction of fresh evidence in the custody of the Land Administration Officer.
- 14.** At paragraphs **8 - 18** of the ruling, the court dwelt on the issues now raised in paragraphs **11** and **14** of the supporting affidavit sworn on **4/11/2025**. The court shall revisit this issue.
- 15.** Coming to the status of the matter, it is not true that the matter is at the 2<sup>nd</sup> plaintiff's case. The record shows that on **3/10/2023**, the plaintiffs' case was marked closed. DW1 took the witness stand and closed his defence on **3/10/2023**. DW2, Elly Ogola, for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, took the

witness stand on **3/10/2023** and was stood down for cross-examination on **4/12/2023**.

- 16.** At that juncture, the 1<sup>st</sup> plaintiff filed an application dated **28/11/2023**. It led to a consent by parties to re-open the 1<sup>st</sup> defendant's case for the 1<sup>st</sup> plaintiff to be allowed to cross-examine the 1<sup>st</sup> defendant as well as DW2. The consent was duly signed by the parties' advocates on record.
- 17.** The 1<sup>st</sup> plaintiff was thereafter given a chance to cross-examine, but opted to seek an adjournment, yet he had filed a notice of intention to act in person on **28/11/2023**. The court record shows that the court reluctantly adjourned the defence for **22/2/2024**.
- 18.** Another application dated **1/12/2023** was placed for hearing on **22/1/2024** and later on **30/1/2024**. The record shows that the 1<sup>st</sup> plaintiff appointed a law firm of K. Serebe & Co. Advocates to act for him, who sought an adjournment.
- 19.** The court declined the adjournment. DW1 was recalled and cross-examined by the 1<sup>st</sup> plaintiff's counsel on record, Mr. Serebe.
- 20.** The record shows that at **4:00 p.m.**, DW2 was recalled for cross-examination. The witness was

stood down on **22/2/2024** for further cross-examination on **12/4/2024**.

- 21.** Come **12/4/2024**, the 1<sup>st</sup> plaintiff told the court that his lawyer, Mr. Serebe, was absent since he had, among other things, not perused the court file on account of a pending ruling. The 1<sup>st</sup> plaintiff also told the court that he had instructed another law firm to represent him as per documents dated **9/4/2024** and a letter dated **11/4/2024**.
- 22.** The court reluctantly allowed the adjournment and ordered that the notice of appointment be paid for and served. The matter was fixed for further defence hearing dates on **24/4/2024** and **21/5/2024**. At this juncture, the 1<sup>st</sup> plaintiff brought an oral application for the calling of fresh evidence, which was declined by the court.
- 23.** After the ruling, the 1<sup>st</sup> plaintiff sought typed proceedings for the way forward. On **30/10/2024**, the court was informed of the death of the 1<sup>st</sup> plaintiff by Mr. Omaiyo, advocate. The case was adjourned to **16/12/2024** to confirm substitution.
- 24.** The advocate for the 1<sup>st</sup> plaintiff did not attend court on **16/12/2024** to confirm the position. A further mention for **1/4/2025** was fixed by the

parties; the 1<sup>st</sup> plaintiff counsel told the court that a **Kitale Chief Magistrates Court Misc. Succession Cause No. E008 of 2025** had been filed and was due for mention in **May 2025**.

- 25.** The court gave a mention for **12/6/2025** to confirm the progress of the substitution. Come **12/6/2025**, the 1<sup>st</sup> plaintiff's counsel did not attend court. A notice to show cause was issued for **24/7/2025** when the 1<sup>st</sup> plaintiff's counsel told the court that the estate had since obtained a limited grant *ad litem* dated **5/6/2025**.
- 26.** Learned counsel requested **14** days to seek substitution. At that juncture, learned counsels present for the defendants submitted that the suit had abated on account of the 1<sup>st</sup> plaintiff. The court fixed the matter for directions in regard to the 2<sup>nd</sup> plaintiff and defendants suit.
- 27.** Having the foregoing background in mind, the question is whether the 1<sup>st</sup> plaintiff deserves the reliefs sought. What the 1<sup>st</sup> plaintiff is seeking is reinstatement of an abated suit, and substitution of the deceased party who passed on on **25/8/2024**.

- 28.** The law requires that the substitution be made before the expiry of one year after the death of a party. Therefore, the 1<sup>st</sup> plaintiff should have been substituted before **25/8/2025**. This application was, however, filed on **5/11/2025**, which is almost **3** months after the suit had abated. The grant ad litem was obtained on **4/6/2025**. The court record shows that the matter came up for a mention on **12/6/2025**. The applicant's advocate did not attend court and use the opportunity to update the court on the progress.
- 29.** On **24/7/2025**, which was a month before abatement, the 1<sup>st</sup> plaintiff's counsel was absent to confirm being in possession of a grant. The court gave a mention date of **2/10/2025**. As soon as the applicant obtained the grant, he did not move the court before **25/8/2025**, but waited until **2/10/2025**. The application before the court was not even before the court by **2/10/2025**.
- 30.** The court had by then given directions as regards the 2<sup>nd</sup> plaintiff's case in line with **Order 24 Rule 3(1)** of the Civil Procedure Rules. **Order 24 Rule 3 (2)** of the Civil Procedure Rules says that only for good reasons can time be extended. The applicant

has not asked this court to extend the time, nor has he given a good reason why, while being in possession of a limited grant *ad litem* since **4/6/2025**, he did not move the court before **25/8/2025**.

- 31.** In ***Said Sweilem Gheithan Saanum -vs Commissioner of Lands (being sued through Attorney General) & 5 others [2015] eKLR***, the court was clear that there are three stages to be followed as per **Order 24** of the Civil Procedure Rules, and for the extension of time, the legal representative must satisfy the court as to what prevented him from continuing with the suit.
- 32.** An abated suit is one that ceases to exist in the eyes of the law after one year of the death. As held in ***Kemboi -vs- Macharia [2025]***, a nullity is a nullity. One cannot put something on nothing. Abatement takes place on its own by effluxion of time. It is a legal consequence that flows from the omission to take necessary steps within one year, to implead the legal representative of a deceased plaintiff.
- 33.** The court has not been told what sufficient cause prevented the 1<sup>st</sup> plaintiff's legal estate

administrator, despite obtaining a limited grant on **4/6/2025**, from attending court on **12/6/2025** and **24/7/2025**, and failing to meet the deadline of **25/8/2025**.

- 34.** Being busy at work and seeking the consensus of the beneficiaries by any stretch of imagination cannot sway the discretion of this court; it is clear that the 1<sup>st</sup> plaintiff's legal estate was disinterested in ensuring that the wheels of justice do not grind to a halt.
- 35.** The application is not three-pronged. Extension of time must be sought first, based on sufficient cause. In **Rebecca Mijide Mungole & Another - vs- Kenya Power & Lighting Company Ltd & Others [2017] eKLR**, the court held that the sequence of the application is set out in law, and if no application is made within a year, the cause of action no longer exists as the suit automatically abates.
- 36.** In **Kenya Farmers Co-operative Union Ltd vs Charles Murgor Deceased T/A Kaptabei Coffee Estate [2008] eKLR**, the court said that purporting to hear and determine an abated suit is an act in futility. Similarly, in **Wallace Kinuthia -**

**vs- Anthony Ndungu Muongi & Others [2013]**

**eKLR**, the court cited Black's Law Dictionary that an abated suit ceases to exist in law.

- 37.** In view of the foregoing, the court finds that the 1<sup>st</sup> plaintiff's suit was extinguished on **25/8/2025**. There are no prayers to extend time, based on sufficient cause, as a basis of granting reinstatement out of time, and to allow the substitution.
- 38.** Equally, even if the court were to be persuaded that there will be prejudice and need to re-open the 1<sup>st</sup> plaintiff's suit, the court record bears witness that the circumstances of the file are that the 1<sup>st</sup> plaintiff has been out to derail and or delay the course of justice in this matter, which the 1<sup>st</sup> plaintiff's counsel on record was privy to.
- 39.** It is Mr. Omaiyo advocate, who first disclosed the death of his client on **28/10/2024**, by a letter to the Deputy Registrar. The letter and the court record discount or discredit the contents of the

supporting affidavit on paragraphs **5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,** and **16** by Jacob Cherirei Kitiyo to be entitled to the prayers sought.

**40.** The upshot is that I find no merits on the application dated **4/11/2025**. It is dismissed with costs.

**41.** Orders accordingly.

**Ruling dated, signed, and delivered** via **Microsoft Teams/Open Court** at Kitale, this **21<sup>st</sup>** day of **January 2026**.

**In the presence of:**

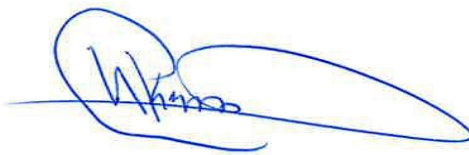
Court Assistant - Dennis

Mr. Ndarwa for Kiarie for 2<sup>nd</sup> defendant present

Omaiyo for the 1<sup>st</sup> plaintiff present

Nyamu for the 1<sup>st</sup> defendant present

Chilaka for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants absent



**HON. C.K. NZILI  
JUDGE, ELC KITALE**