



REPUBLIC OF KENYA



**Njuguna & another v Ng'Ang'A & 14 others; Premier Bank (Interested Party); Muchiri  
(Legal representative of the Estate of Irene Wanjiru Ng'ang'a) (Proposed Defendant)  
(Land Case E048 of 2023) [2026] KEELC 700 (KLR) (9 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 700 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
LAND CASE E048 OF 2023  
JA MOGENI, J  
FEBRUARY 9, 2026**

**BETWEEN**

**ANTONY THIONGO NJUGUNA ..... 1<sup>ST</sup> PLAINTIFF**

**GRACE NJOKI MAGUA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ASAPH MUNGAI NG'ANG'A ..... 1<sup>ST</sup> DEFENDANT**

**JULIUS NG'ETHE NG'ANG'A ..... 2<sup>ND</sup> DEFENDANT**

**NYAKINYUA INVESTMENTS LTD ..... 3<sup>RD</sup> DEFENDANT**

**THE LAND REGISTRAR, RUIRU ..... 4<sup>TH</sup> DEFENDANT**

**MARTIN KARANJA BURUGU ..... 5<sup>TH</sup> DEFENDANT**

**MICHAEL GICHINGA MUCHACHI ..... 6<sup>TH</sup> DEFENDANT**

**ANTONY MUIGAI NDUNG'U ..... 7<sup>TH</sup> DEFENDANT**

**SAMUEL WANYOIKE WAINAINA ..... 8<sup>TH</sup> DEFENDANT**

**SOLOMON KIRUMBA ..... 9<sup>TH</sup> DEFENDANT**

**RAHAB NJERI MURII'THI ..... 10<sup>TH</sup> DEFENDANT**

**ROSE WAITHIRA KIRUTHI ..... 11<sup>TH</sup> DEFENDANT**

**ANTONY KUNGU WAINAINA ..... 12<sup>TH</sup> DEFENDANT**

**KIBABAI NJAGI CHARLES ..... 13<sup>TH</sup> DEFENDANT**

**PURITY NJOKI MUTEKI ..... 14<sup>TH</sup> DEFENDANT**

**IRENE WANJIRU NG'ANG'A ..... 15<sup>TH</sup> DEFENDANT**



**AND**

**PREMIER BANK ..... INTERESTED PARTY**

**AND**

**AGNES MUKAMI MUCHIRI (LEGAL REPRESENTATIVE OF THE ESTATE OF  
IRENE WANJIRU NG'ANG'A) ..... PROPOSED DEFENDANT**

**RULING**

1. Vide a Notice of Motion Application dated 27/02/2025 the Applicant seeks the following:
  - i. Spent.
  - ii. That the orders of this Honorable Court issued on 25<sup>th</sup> February 2025 closing the case on the ground of it having abated by operation of the law be set aside;
  - iii. That having served extracted and served Summons to Enter Appearance on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants and with intention to serve the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> to 14<sup>th</sup> Defendants upon amendment of the Plaint to include the 15<sup>th</sup> Defendant upon their application dated 10<sup>th</sup> January 2025, the suit be reinstated/revived for purposes of concluding the matter.
2. The application is based on the grounds on the face of it and the annexed Affidavit of Grace Njoki Magua and other grounds to be adduced at the hearing.
3. None of the other Respondents opposed the application save for the 5<sup>th</sup> Defendant/Respondent (hereafter 'Defendant') who filed a Replying Affidavit deponed on 3/06/2025 and Grounds of Opposition of even date and averred that the Applicant's application dated February 27, 2025, should be struck out with costs. The core of the 5<sup>th</sup> Respondent's argument is that the lawsuit no longer exists in the eyes of the law.
4. The Defendant argues that the entire application is legally bad because the underlying lawsuit abated way back in November 2023 by operation of the law. That the suit was filed on October 4, 2023 and Summons were supposed to have been extracted latest by 05/11/2023 but this did not happen.
5. Therefore, because mandatory legal steps were not taken within the required timeframe, the suit ceased to exist by operation of law.
6. According to the Defendant the Court formally confirmed this abatement on February 25, 2025 on its own motion.
7. The Defendant asserts that the Applicant was alerted to these failures as early as 2024 but chose to neglect them. Even when a Judge granted leave to serve Summons on October 30, 2024, the Applicant waited more than 90 days precisely on 6/02/2025 to extract them, which the Defendant/Respondent argues is too late.
8. The averment of the Defendant is that once a suit has abated, there is nothing left to set aside, reinstate, or revive. That therefore the remedies the Applicant is seeking are not legally available for a suit that has already expired by operation of law.
9. Further the Defendant reiterated that the fact that some other Defendants filed Defenses does not cure the legal death of the suit.



10. The Defendant further clarifies they did not move to "strike out" the suit maliciously; they simply informed the Court that the suit had already abated by law.
11. The Defendant thus characterizes the application as misconceived, vexatious and an abuse of the Court process, intended only to annoy the parties and the Court. In the circumstances, the Defendant requests that the application be dismissed or struck out with costs.
12. The Court directed the parties to file their submissions and the Plaintiff filed theirs dated 9/07/2025 and the Defendant filed theirs dated 26/08/2025.
13. I have considered the well-researched submissions of both parties in writing my Ruling.

### **Analysis and Determination**

14. The Court notes that the following are the issues for determination:
  - i. Whether the Suit has Abated by Operation of Law.
  - ii. Who bears the cost of this application?
15. On the first issue, the Court notes that despite being notified by the Court Registry about the Summons being ready, the Plaintiff did not take out Summons within 30 days of the suit being filed in October 2023, as is provided for under Order 5 of the Civil Procedure Rules. Order 5 of the Civil Procedure Rules (2010) governs the issuance and service of Summons. Unlike many other procedural steps where the Court has broad discretion to cure errors, the language regarding the collection and service of Summons is famously strict and is written in mandatory terms. See the case of *Bake "N" Bite (NRB) Limited v Daniel Mutisya Mwalonzi* [2015] eKLR and *Safaricom PLC v Ali* (Civil Appeal E32 of 2022) [2023] KEHC 4045 (KLR) (4 May 2023) (Judgment).
16. The other rule for consideration in matters of abatement of a suit is Order 11A, Rule 3 (and subsequent rules). This one too mandate that within thirty (30) days after the close of pleadings, the Plaintiff must take out a Summons for Directions.
17. The automatic nature of Order 11A, Rule 3 is found in its specific language: if the summons is not taken out within the prescribed period, the suit abates. Unlike a dismissal for want of prosecution, which requires a party to move the Court, abatement under Order 11A is intended to be an automatic legal death of the suit.
18. There is the indolence principle espoused in the *Safaricom vs Mutisya* case in the consistent principle applied in the High Court and Court of Appeal is that Registry omissions do not excuse a party's inaction.
19. The Court has often held that the negligence of the Registry does not excuse the indolence of a party. This is because under Order 11A Rule 3 was designed to eliminate delays. While Rule 3 says that Court shall convene a case conference, the precedent in *Hillary Kipngetich Langat v Eric Kiprotich Terez* [2014] KEELC 248 (KLR) (and similar Case Management Rulings) point to the fact that there has to be active prosecution of cases.
20. Meaning that the "Overriding Objective" (Oxygen Principle) under Sections 1A and 1B of the [\*Civil Procedure Act\*](#) requires parties in this case the Applicant/Plaintiff to play their part in the efficient disposal of cases. It is notable though that this case is not about case management.



21. Order 5 Rule 1 (6) provide for automatic abatement because it contains a self-executing provision:
- “Every summons ... shall be collected for service within thirty days of issue or notification, whichever is later, failing which the suit shall abate.”
22. In many Environment and Land Court and High Court decisions, Judges have held that the word shall is mandatory. Once the timeline passes, the suit ceases to exist by operation of law. See the case of Said Sweilem Gheithan Saanum v Commissioner of Lands (2015)eKLR.
23. As a matter of fact, the Court in the case of M’Mwereria M’Aburi v. David M’Mwereria & another [2016]eKLR confirmed that if the Summons for Directions is not taken out within 30 days, the suit abates. The Court noted that it cannot hear an abated suit as it is technically “dead.”
24. In India, under Order 22 of the Code of Civil Procedure, abatement is strictly automatic. In the case of Union of India v. Ram Charan (1964), the Supreme Court of India held that “abatement takes place of its own force by passage of time.” A party does not need to apply for a suit to abate; they only apply to set aside an abatement that has already happened. The Court held that ignorance of law is not a sufficient excuse for failing to take a mandatory step.
25. Near home here in Uganda, Uganda’s Civil Procedure has similar scheduling conference requirements. In the case of Ayivu Holdings Ltd v. Nile Coach Ltd (2012), the Ugandan High Court held that failure to take out a scheduling conference (similar to Summons for Directions) makes the suit incompetent. However, like Kenya, Ugandan Courts often allow for the revival of the suit if the Plaintiff can show that the delay did not prejudice the Defendant.
26. I agree with the observation by the 5<sup>th</sup> Defendant made at paragraph 6 of the Replying Affidavit which it states:
- “That in any event as the Applicants and their counsel admit, even if Lady Justice Kemei had granted leave for extraction and service of summons on 30/10/2024 (a year after the filing of the suit), the suit would still be considered as abated as at 06/02/2025 when the summons were purportedly extracted being a lapse of more than ninety (90) days from the date of the alluded order. (Annexed hereto and marked MKB 1 is a copy of the said Summons extracted on 06/02/2025).”
27. It is my observation that by missing the 30-day window after pleadings closed, the suit technically abated by operation of law. Having regard to the applicable provisions which I have highlighted above, it is my view that Order 5 Rules 1 and 2 set out a very elaborate procedure of how Summons are to be processed, issued and served and where there are difficulties of serving within the prescribed time frames an equally elaborate procedure for extending the validity of the Summons is outlined.
28. I am unable to accept that Order 5 Rule 1 would, fall to be considered as providing a mere procedural technicality as suggested by the Plaintiff. It does in my view substantively provide the procedure under which a Defendant is called to answer to a suit and is thus core to the initiation of a suit as far as a Defendant is concerned and it would be my holding that where no Summons have been issued in accordance with Order 5 and appropriately served on the Defendant there cannot be a competent suit against a Defendant. The provisions of Order 5 Rule 1 are couched in mandatory terms and cannot be taken casually and/or lightly. In my view service of Summons on a Defendant is a vital step in initiating the litigation against a Defendant and until a Summons is properly served on the Defendant there is no valid invitation to the Defendant to defend the suit. In the premises it is my finding and holding that no Summons have been served on the Defendant in this suit within the prescribed period and



the suit having been filed in October 2023 the Plaintiff has been extremely lax-in prosecuting it and is undeserving of any discretion from the Court.

29. I accordingly dismiss the Notice of Motion dated 27/02/2025 and order the Plaintiff's suit struck out with costs to the 5<sup>th</sup> Defendant.

30. The costs of the application are awarded to the 5<sup>th</sup> Defendant.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT THIKA ON THIS 9<sup>TH</sup> DAY OF FEBRUARY 2026.**

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**MOGENI J**

**JUDGE**

In the presence of:

..... for the Plaintiffs/Applicants

..... for 1<sup>st</sup> Defendants/Respondent

..... for 2<sup>nd</sup> Defendant/Respondent

..... for 3<sup>rd</sup> Defendants/Respondent

..... for 4<sup>th</sup> Defendant/Respondent

..... for 5<sup>th</sup> Defendant/Respondent

..... 6<sup>th</sup> to 13<sup>th</sup> Defendant/Respondent

Melita ..... Court Assistant

.....

**MOGENI J**

**JUDGE**

