

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
ELC CASE NO. 225 OF 2021 (OS)

JOHN KIURA WILSON
SIDI KAZUNGU KITSAO
CHANZERA MOLE MBITHA
ALI JUMA IBRAHIM & 162 OTHERS APPLICANTS

VERSUS

JANENDRA RAICHAND RESPONDENT

RULING

1. By the Notice of Motion dated 28th March 2025, the Applicants pray for the following:

- 1. Spent;**
- 2. That the Honourable Court be pleased to issue an Order that the entire suit survives the Respondent - Janendra Raichand (now presumed deceased);**
- 3. That for purposes of expediency of justice there be a stay of the current proceedings herewith awaiting the determination of the outcome by a**

Court of similar jurisdiction in Succession Cause No. E092 of 2023; In the Matter of the Estate of Janendra Raichand Shah (deceased); and

- 4. That the Honourable Court does issue such further orders in the expediency of justice.**
2. The application is supported by an Affidavit sworn by John Kiura Wilson (the 1st Applicant) on the 4th June 2024 and is premised on the grounds:
- i. That the Respondent's counsel herein did not make a disclosure of the death of the Respondent;**
 - ii. That the Applicants have since discovered the existence of Nairobi High Court Succession Cause No. E092 of 2023; In the Matter of the Estate of Janendra Raichand Shah (deceased), wherein the suit property herein is listed as an asset of the deceased;**
 - iii. That in the event the Respondent and his Administrators proceed to register the Grant issued in the said Succession cause, the present suit will be an exercise in futility;**

- iv. That for the said reason the Applicant has filed a Summons for Revocation of the Grant in the said Succession Cause; and**
- v. That it is only fair and just in the circumstances that the present suit does await the outcome of the revocation proceedings before the Family Court.**
3. The application is opposed. In a Replying Affidavit sworn by K.N. Kibara Advocate as Counsel for the Respondent on 16th May 2025, he avers that the application is founded on a non-existent suit and that as such the same ought to be struck out. Counsel further avers that the suit against the Respondent has abated and that the Applicant has no locus to bring this application.
4. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions placed before me by the Learned Counsel for the Respondent. The Applicant did not file any submissions.

5. By their application before the Court, the Applicants pray for an order that the suit survives the Respondent. In addition, the Applicants urge the court to grant an order of stay of proceedings of this suit pending the determination of Nairobi High Court Succession Cause No. E092 of 2023; In the Matter of the Estate of Jenandra Raichand Shah.
6. The application which is expressed to have been brought pursuant to Order 24 Rules 1 and 2 of the Civil Procedures Rules is premised on the grounds inter alia, that the Respondent's Counsel did not disclose the death of the Respondent and that the Applicants have since after combing through the records of the Family Division Registry, discovered the existence of Nairobi High Court Succession Cause No. E092 of 2023 which relates to the deceased's estate.
7. It is further the Applicant's case that the suit property herein is listed as one of the assets of the deceased Respondent and that it is only fair and just that these proceedings be stayed to give time for the High Court to consider an

application made to revoke the Grant so far issued in the said Succession Cause.

8. In regard to a deceased Defendant Order 24 Rule 4 of the Civil Procedure Rules provides as follows:

“(1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant 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 defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.”

9. Arising from the foregoing provisions it is clear that a suit against a deceased person abates if no application for substitution is made within one year of the date of death.

10. In the matter before me, the Applicants are yet to make an application for substitution. Instead they have come to court seeking for a declaration that the suit survives the deceased Respondent and that the proceedings herein be stayed pending the hearing and determination of an application they had filed in the Succession Cause for the revocation of a Grant issued to some two individuals on 16th October 2024.
11. From the material placed before the court, it is apparent that the Respondent passed away about 2 years before this application was instituted. While the Applicants purport that information about the death was concealed from them by the Respondent's Counsel, the record herein reveals the contrary.
12. A perusal of the record reveals that on 4th June 2024, Ms. Kinuva, Learned Counsel for the Respondent informed the Court that the Respondent had passed away "in Mid-2023". On the basis of that information, the Court adjourned the matter which was coming up for hearing to allow for the substitution of the Respondent. No such substitution has been made to-date.

13. Dealing with a similar matter in ***Kenya Farmers Co-Operative Union Ltd -vs- Charles Murgor (deceased) t/a Kiptabei Coffee Estate (2005) eKLR***, the court held as follows:

“In the instant case there was no application for substitution made within one year since the death of the Defendant. Therefore, as a matter of law the suit as against him abated. When substitution was subsequently purportedly made on 5th March, 1998 there was no suit subsisting in which substitution could be made.

It had abated on or about 23rd April, 1996, that is, one year since the death of the Defendant. The order of substitution was thus made in error. It was unlawful and ought not to have been entered.”

14. In the matter before me it was clear from the reference to the Succession Cause instituted at the Family Division in Nairobi that the Respondent had passed away in the year 2023. By March 2025 when the application was filed, the suit had already abated and the Applicants ought to have first sought for enlargement of time to substitute and made

an application for revival of the suit under Order 24 Rule 7 of the Civil Procedure Rules before making any application herein. As at now, this suit has abated and the Court cannot issue any orders in a suit that no longer exists.

15. It follows that I did not find any merit in the Motion herein dated 28th March 2025. The same is dismissed with no order as to costs.

Ruling dated, signed and delivered in open court and virtually at Mombasa this 19th day of February, 2026

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**J.O. OLOLA
JUDGE**

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Ateng Advocate for the Applicants
- c) Ms. Bwire holding brief for Mr. Kibaara Advocate for the Respondent