

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC CASE NO. 55 OF 2019 (OS)

JAMES KIPSIELE KEMEI

**(Suing as an administrator of the estate of TABUTANY
CHEPKEMOI KOROS (DECEASED)).....**

APPLICANT

VERSUS

KIPRONO ARAP

SIGE.....RESPONDENT

AND

JOEL KIPKORIR SIELE

NICOLAS KIPKORIR KURGAT.....PROPOSED

APPLICANTS

RULING.

Introduction.

- 1.** This ruling is in respect of the Proposed Applicants Notice of Motion application dated 20th January, 2025. The application is expressed to be brought under **Order 24 Rule 3 & 7(2)** and **Order 50 Rule 6** of the **Civil Procedure Rules**.
- 2.** The application seeks the following orders;

- a. That this Honourable Court be pleased to order revival of the suit herein.**
- b. That this Honourable Court be pleased to extend the time within which the deceased Plaintiff (sic) should have been substituted.**
- c. That this Honourable Court be pleased to grant an order that the Plaintiff (sic) herein, James Kipsiele Kemei (now deceased), who was the representative of the estate of Tabutany Chepkemoi Koros (deceased), be substituted with Joel Kipkorir Siele and Nicolas Kipkorir Kurgat.**
- d. That the necessary directions be given.**
- e. That the costs of this application be in the cause.**

- 3.** The application is based on the grounds on its face and the Supporting Affidavit of **Joel Kipkorir Siele** sworn on 20th January, 2025.

Factual Background.

4. The Applicant commenced the present proceedings vide the Originating Summons dated 28th November, 2019 where he sought the determination of the following questions;

a. Whether Tabutany Chepkemoi Kemei (deceased) was the registered owner of all that property known as LR No. Kericho/Kapsoit/1877 measuring 1.54 hectares.

b. Whether on or about the 21st April, 1994, the Respondent fraudulently caused the transfer and registration of the said parcel of land comprised land comprised (sic) in L.R No. Kericho/Kapsoit/ 1877 in his name, about 5 years after the demise of the said Tabutany Chepkemoi Kemei (Deceased) on 20 June, 1989.

c. Whether the Respondents (sic) fraudulently caused the sub-division of the said land parcel known as L.R NO. Kericho/ Kapsoit/ 1877 into L.R NO. Kericho/Kapsoit/2123 and L.R NO.

Kericho/ Kapsoit/2124 now registered in his name; in the absence of a confirmed Grant of Letters of Administration to the estate of the (sic) Tabutany Chepkemoi Kemei (Deceased).

d. Whether the Respondent fraudulently misrepresented facts to the Lands (sic) Registrar over the deceased's land resulting in the alteration of the register in respect of L.R No.Kericho/Kapsoit/1877 to reflect him, as its registered proprietor and its subsequent sub-division into L.R NO. Kericho/Kapsoit/2123 and 2124.

5. The Applicant also sought the following orders;

a. A declaration that all that parcel of land comprised in L.R No.Kericho/Kapsoit/1877 now comprised in L.R No. Kericho/Kapsoit/2123 and L.R No. Kericho/Kapsoit/2124, lawfully belongs to the estate of Tabutany Chepkemoi Kemei (Deceased).

b. A declaration that the registration of all that parcel of land comprised in L.R No.

Kericho/Kapsoit/1877 in the Respondent's name and its subsequent sub-division into L.R No. Kericho/Kapsoit/2123 and L.R No. Kericho/Kapsoit/2124 was procured fraudulently, illegally and/or irregularly hence null and void.

c. An order for cancellation of the titles in respect of L.R No. Kericho/Kapsoit/2123 and L.R No. Kericho/2124 (sic) both registered in the name of the Respondent and restoration of the register in respect of L.R No. Kericho/Kapsoit/1877 in the name of Tabutany Chepkemoi Kemei (Deceased).

d. Costs of this suit.

- 6.** The Respondent did not file a response to the Originating Summons.
- 7.** On 2nd June, 2022, this suit was dismissed pursuant to the provisions of **Order 17 Rule 2(5)** of the **Civil Procedure Rules**.

8. The application under consideration first came up for hearing on 25th March, 2025 which hearing was adjourned to 13th May, 2025.
9. On 13th May, 2025, the Court issued directions that the application be canvassed by way of written submissions.
10. The matter was mentioned to confirm filing of submissions and then reserved for ruling.

The Proposed Applicants Contention.

11. The affidavit in support of the application is sworn by the 1st Proposed Applicant. He contends that he has the authority of his Co-Applicant to swear the affidavit.
12. He also contends that he is the son of **James Kipsiele Kemei** who died on 28th June, 2020 at Kericho County Referral Hospital.

- 13.** He further contends that sometime in the year 2024, they sought to file a suit on behalf of the estate of their grandmother one **Tabutany Chepkemoi Koros** (deceased). The intended suit was over land parcel **No. Kericho/Kapsoit/1877** which is now subdivided into land parcel **No's Kericho/Kapsoit/2123** and **2124**.
- 14.** It is his contention that they approached an advocate who advised them to get the authority of the Court to file the suit on behalf of the estate of their deceased grandmother.
- 15.** It is also his contention that they visited the Office of the Chief, Kenegut Location in order to get the introductory letter to enable them petition for a Limited Grant Ad Litem.
- 16.** It is further his contention that the Chief informed them that their deceased father had mentioned to him that he had filed a suit in the Environment and Land Court at Kericho over the

suit parcels of land. The Chief advised them to find out about the said suit.

- 17.** He contends that they made inquiries and found out that the said suit had been filed by the firm of M/s Bett & Company Advocates.
- 18.** He also contends that they thereafter visited the said firm of advocates and confirmed that a suit had been instituted by their deceased father and he goes on to state that the said firm of Advocates lost contact with their deceased father in the year 2020 and that they unfortunately did not have the contacts of their deceased father's next of kin.
- 19.** He further contends that their deceased father died before the suit could be heard and determined and goes on to state that they are now seeking to revive the present suit in order to get justice.

- 20.** It is his contention that they petitioned for Letters of Administration Ad Litem for the estate of **Tabutany Chepkemoi Koros** in Kericho CM Ad Litem Cause No. E050 of 2024 and that the said letters of administration were issued.
- 21.** It is also his contention that the application under consideration will not prejudice the parties to this suit as it has been made in good faith and in the interest of justice.
- 22.** It is further his contention that if the present application is not allowed, they stand to suffer great prejudice as they are likely to lose their late father's interest in the aforementioned parcels of land.
- 23.** He contends that the delay in filing the application under consideration was occasioned by factors beyond their control.

24. He ends his deposition by urging the Court to exercise its discretion and allow the application.

The Respondent's Response.

25. In response to the application, the Respondent filed a Replying Affidavit sworn on 25th April, 2025.

26. He deposes that the Proposed Applicants obtained the Certificate of Death of **James Kipsiele Kemei** on 27th July, 2020 and then filed the application under consideration in January, 2025.

27. He also deposes that **James Kipsiele Kemei** (Deceased) filed the present suit on behalf of the estate of **Tabutany Chepkemoi Koros** after he obtained a Limited Grant of Letters of Administration which were issued on 15th April, 2024(sic)

- 28.** It is his deposition that the Proposed Applicants were aware of the present suit but they opted not to act and goes on to state that the Proposed Applicants have not demonstrated sufficient cause for the delay in substituting the deceased Applicant which led to the abatement of the suit.
- 29.** It is also his deposition that the suit is now “dead” and cannot be “resuscitated” before the substitution. (sic)
- 30.** It is further his deposition that he will be prejudiced if this suit is revived.
- 31.** He deposes that in any case the Proposed Applicants have not demonstrated sufficient reason for this suit to be revived.
- 32.** He also deposes that he has been advised by his advocates on record that there is no suit to be revived as the suit already “expired” (sic).

33. He ends his deposition by urging the Court to dismiss the Proposed Applicants application with costs.

Issues for determination.

34. The Proposed Applicants filed their submissions on 15th July, 2025 while the Respondent filed his submissions on 7th July, 2025.

35. The Proposed Applicants reiterate their averments in the Affidavit in support of the application and submit on whether their application has raised reasonable grounds for revival of the suit.

36. The Proposed Applicants rely on **Order 24 Rule 3(2) & 7 (2)** of the Civil Procedure Rules and submit that a suit abates if a Plaintiff dies and is not substituted within one year.

- 37.** The Proposed Applicants also submit that the Court has power under **Order 24 Rule 7(2)** of the Civil Procedure Rules to extend time and revive the suit upon sufficient cause being shown.
- 38.** The Proposed Applicants reiterate that the Applicant instituted the present suit in the year 2019 and unfortunately died in June, 2020.
- 39.** The Proposed Applicants submit that they only came to learn about this suit in the year 2024 four years after the death of their father.
- 40.** It is the Proposed Applicants submissions that upon learning about the existence of the suit, they promptly sought Grant of Letters of Administration Ad Litem before filing the present application.
- 41.** It is also the Proposed Applicant's submissions that the Respondent contends that they obtained their deceased

father's death certificate in the year 2020 and they therefore ought to have known about the suit.

- 42.** It is further the Proposed Applicant's submissions that the said contention is misleading and speculative.
- 43.** The Proposed Applicants submit that obtaining a death certificate is procedural and cannot reasonably be taken to imply knowledge of pending litigation unless there is proof of such knowledge and/or involvement.
- 44.** The Proposed Applicants also submit that the Respondent's contention that they have no capacity to be substituted as Applicants is misplaced as they currently hold a grant of letters of administration to their deceased grandmother's estate.
- 45.** The Proposed Applicants further submit that the present suit raises issues of ownership and alleged unlawful subdivision

of ancestral land which forms part of the estate of **Tabutany Chepkemoi Koros** (deceased).

- 46.** It is their submissions that they have lived on the suit parcel of land since they were children.
- 47.** It is also their submissions that the delay in applying for revival and substitution was not intentional and neither was it due to negligence.
- 48.** It is further their submissions that the delay was occasioned by circumstances beyond their control which include lack of knowledge of the existence of this suit and the breakdown in communication between their deceased father and his advocates.
- 49.** The Proposed Applicants submit that they stand to suffer grave prejudice if the present application is not allowed as they will be permanently barred from pursuing a legitimate claim over their grandmother's estate.

50. The Proposed Applicants also submit that the Respondent will not be prejudiced if the application is allowed as prayed. They rely on the judicial decisions of **Hanson Muidi Mutula & 8 Others vs Kennedy Mutua Ngunu & 3 Others [2022] eKLR, Natasha Jobovna Mutai & Alexander Kiplagat Mutai (suing as Administrators of the Estate of Job Kibiwott Mutai t/a Ludi Investments and Fudi Investments) & 3 others v Hebatulla Investment Limited & 5 others (In respect to the 1st and 2nd Applicant's application dated 14th February, 2021 seeking to revive the 1st & 2nd Plaintiffs suit after abatement) [2022] KEELC 3589 (KLR)** and urge the Court to allow their application as prayed.
51. The Respondent submits that the Proposed Applicants are the sons of the deceased Applicant and they are seeking to institute a suit on behalf of their deceased grandmother.

- 52.** The Respondent also submits that the Proposed Applicants have obtained a Grant of Letters of Administration Ad Litem for the estate of their deceased grandmother instead of the deceased Applicant.
- 53.** The Respondent further submits that **Tabutany Chepkemoi Koros** (deceased) was not a party to the present proceedings and cannot therefore be substituted.
- 54.** It is the Respondent's submissions that the application under consideration has been filed five years after the suit abated which delay is inordinate.
- 55.** The Respondent relies on **Order 24 Rule 3(1) & Rule 7** of the Civil Procedure Rules and reiterates that the Proposed Applicants have not given a plausible explanation for the delay in filing the application.

- 56.** The Respondent submits that the Applicant died in the year 2020 and the Proposed Applicants sought the assistance of the Chief in processing the death certificate which certificate was issued in the year 2020.
- 57.** The Respondent also submits that the Proposed Applicants ought to have sought for information about the pending suit from the said Chief.
- 58.** The Respondent further submits that the Proposed Applicants application offends **Section 45** of the Law of Succession Act as they are intending to substitute the deceased Applicant without seeking legal representation of his estate.
- 59.** It is the Respondent's submissions that the Proposed Applicants application is a non-starter as the registered owner of the suit parcels of land is not the deceased Applicant.

60. The Respondent concludes his submissions by urging the Court to dismiss the Proposed Applicants application.

Analysis and Determination.

61. I have considered the Proposed Applicants application, the response thereto and the rival submissions. In my view that the only issue that arises for determination is whether the application dated 20th January, 2025 has merit.

62. The Proposed Applicants contend that they are the sons of **James Kipsiele Kemei** ; the Applicant in the present suit who is now deceased.

63. They also contend that the deceased Applicant commenced the present proceedings on behalf of the estate of **Tabutany Chepkemoi Koros** (deceased) but failed to inform them of the suit.

- 64.** They further contend that sometime in the year 2024, they wanted to file a suit on behalf of the estate of **Tabutany Chepkemoi Koros** (deceased) and when they approached their area chief, he informed them that their deceased father had instituted the present suit. Upon making further inquiries, they discovered that the present suit had abated in the year 2020.
- 65.** They, therefore, seek that the suit be revived and they be substituted in place of the deceased Applicant.
- 66.** The Respondent on the other hand contends that there has been inordinate delay in the filing of the application under consideration.
- 67.** The Respondent also contends that the Proposed Applicants were aware of the present proceedings and they have not demonstrated sufficient cause for the delay in substituting the deceased Applicant.

68. Order 24 Rule 3 of the Civil Procedure Rules provides as follows;

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

(2) Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased Plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased Plaintiff:

Provided the Court may, for good reason on application, extend the time.”

69. The Proposed Applicants have attached to the affidavit in support of the application a copy of the Certificate of Death of **James Kipsiele Kemei**. It is death certificate No. 0928309 and it shows that he died on 28th June, 2020.

70. It is therefore evident that the present suit abated on 28th June, 2021 which was way before it was dismissed on 2nd June, 2022.

71. Order 24 Rule 7 (2) of the Civil Procedure Rules provides as follows;

“(2) The Plaintiff or the person claiming to be the legal representative of a deceased Plaintiff or the trustee or official receiver in the case of a bankrupt Plaintiff may apply for an order to revive a suit which has abated or to set aside an

order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.”

72. The Court of Appeal in **Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others [2017] eKLR** held as follows;

“Where a suit abates, no fresh suit can be brought on the same cause of action because it is extinguished and cannot be maintained in the form it was originally presented. Because the suit will only abate where, within one year of the death of the Plaintiff no application is made to cause the legal representative of the deceased Plaintiff to be joined in the proceedings, it is imperative and we may add, logical, where the legal representative is not so joined within one year, that an

application be made for extension of time to apply for joinder of the deceased Plaintiff's legal representative. It is only after the time has been extended that the legal representative can have capacity to apply to be made a party. Order 24 must be construed by reading it as a whole and the sequence in which it is framed must be followed without short circuiting it. The proviso to rule 3(2) to the effect that the Court may, for good reason on application, extend the time goes to show that without time being extended, no application for revival or joinder can be made. It is the effluxion of time that causes the suit to abate. It is that time that must, first be extended. Once time has been enlarged, only then can the legal representative bring an application to be joined in the proceedings. Again it is only after the legal representative has been joined as a party that he can apply for the revival of the action. In

our view there is nothing objectionable to making an omnibus application for all the three prayers. (Emphasis mine)

- 73.** In the above cited judicial decision, the Court held that a legal representative intending to revive a suit must first seek extension of time and only after time has been extended can the legal representative be joined as a party. Once the legal representative has been joined as a party, he then can make an application to revive the suit.
- 74.** In the application under consideration, the Proposed Applicants are seeking that the suit be revived and time be extended for the substitution of the deceased Applicant.
- 75.** Attached to the Affidavit in support of the application is a copy of a Limited Grant of Letters of Administration Ad Litem issued in Kericho CM Ad Litem No. E050 of 2024 In the matter of the estate of the late **Tabutany Chepkemoi**

Koros. It is issued on 16th April, 2024 to **Joel Kipkorir Siele** and **Nicolas Kipkorir Kurgat**.

- 76.** The Respondent submits that the Proposed Applicants have obtained Letters of Administration Ad Litem in respect of the estate of **Tabutany Chepkemoi Koros** (deceased) instead of the estate of **James Kipsiele Kemei** the deceased Applicant.
- 77.** The Respondent also submits that **Tabutany Chepkemoi Koros** (deceased) was not a party to the present proceedings and she cannot therefore be substituted.
- 78.** It is important to note that the deceased Applicant commenced the present proceedings in his capacity as the administrator of the estate of **Tabutany Chepkemoi Koros** (deceased).

- 79.** In other words, **James Kipsiele Kemei** the deceased Applicant, was suing as the administrator of the estate of **Tabutany Chepkemoi Koros** (deceased) and was not suing in his own capacity.
- 80.** Now that the Applicant is deceased, the Proposed Applicants have obtained Letters of Administration Ad Litem in respect of the estate of **Tabutany Chepkemoi Koros** which estate the deceased Applicant was representing.
- 81.** The Respondent's submissions that **Tabutany Chepkemoi Koros** (deceased) was not a party to the present proceedings is inaccurate.
- 82.** In the judicial decision of **Silas Njeru Njiru & 2 others v Mugo Mukere; Leonard Njeru Mukera & another (Intended Defendants/Respondents) [2022] eKLR** the Court held as follows;

“31. From the provisions of Order 24 rule 7(2) of the Civil Procedure Rules cited above it is provided that an application for revival of suit can be allowed if the applicant shows that he was prevented by a sufficient cause from continuing the suit.

What is sufficient cause was defined in the Court of Appeal in the case of The Hon. Attorney General Vs the Law Society of Kenya & Another Civil Appeal (Application) No. 133 of 2011

“Sufficient cause or good cause in law means:-

The burden placed on a litigant (usually by Court rule or order) to show why a request should be granted or an action excused. See Black’s Law Dictionary, 9th Edition, page 251. Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubt in a Judges mind. The explanation should

not leave unexplained gaps in the sequence of events”.

- 83.** For the Court to exercise its discretion and revive the suit, the Proposed Applicants must demonstrate that they were prevented by a sufficient cause in substituting the deceased Plaintiff.
- 84.** The Proposed Applicants have explained that sometime in the year 2024, they sought to file a suit on behalf of the estate of their grandmother one **Tabutany Chepkemoi Koros** (deceased) in respect of land parcel No. Kericho/Kapsoit/1877 which is now subdivided into land parcel No's Kericho/Kapsoit/2123 and 2124.
- 85.** They further explain that for them to institute the suit an advocate advised them to get a letter from their chief which letter would be useful in petitioning for grant of letters of administration ad litem.

- 86.** They go on to explain that they visited the Office of the Chief, Kenegut Location in order to get the introductory letter to enable them petition for letters of administration ad litem and the Chief informed them that their deceased father had mentioned to him that he had filed a suit in the Environment and Land Court at Kericho over the suit parcels of land.
- 87.** The proposed Applicants further explain that upon inquiries, they found out that a suit had been filed by the firm of M/s Bett & Company Advocates which firm confirmed to them that a suit had indeed been instituted by their deceased father and that because the said firm of advocates had lost contact with their deceased father in the year 2020, the suit was dismissed.
- 88.** The Limited Grant of Letters of Administration Ad Litem attached to the Proposed Applicants affidavit in support of the application was issued on 16th April, 2024.

- 89.** This Court notes that the Proposed Applicants have not given an explanation as to why they filed the application under consideration on 20th January, 2025 and yet they obtained the Limited Grant of Letters of Administration in April, 2024.
- 90.** Be that as it may, it is my view that the Proposed Applicants have shown sufficient cause and further it is in the interest of justice that time be extended to join them to this suit, that they be joined to this suit and that this suit be revived.
- 91.** In any event, the Respondent has not demonstrated any prejudice he is likely to suffer if the application is allowed.

Disposition.

- 92.** The upshot of the foregoing is that the Proposed Applicants application dated 20th January, 2025 is merited and it is allowed in the following terms:

- a. Time within which to substitute the deceased Applicant is hereby enlarged.**
- b. Joel Kipkorir Siele and Nicolas Kipkorir Kurgat are hereby substituted in this suit in place of James Kipsiele Kemei (deceased).**
- c. The suit against the Defendant is hereby revived.**
- d. Costs of the application shall be in the cause.**

93. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 19TH DAY OF FEBRUARY, 2026.**

**L. A. OMOLLO
JUDGE.**

In the presence of: -

Mr. Caleb Koech holding brief for Mr. Langat for the Applicants.

Mr. Miruka for the Respondent.

Court Assistant; Mr. Joseph Makori.

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