

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ELC CASE NO. 100 OF 2005

KIPLANGAT ARAP MAINA.....
.....PLAINTIFF

VERSUS

JOB KIBET MAINA.....
DEFENDANT

AND

**PHILIP KIMUTAI LANGAT (Being the legal representative of
the estate of KIPLANGAT ARAP MAINA (DECEASED))**
.....APPLICANT

AND

**ZACHARIAH KIPKOECH BETT(Being the legal
representative of the estate of KIBET ARAP MAINA alias
JOB KIBET MAINA(DECEASED))**
.....INTERESTED PARTY

RULING.

Introduction.

- 1.** This ruling is in respect of the Applicant's Notice of Motion application dated 2nd August, 2024. The application is expressed to be brought under **Article 159 (2)(d)** of the Constitution of Kenya, **Order 24 Rule 3, 4 & 7(2) & Order**

51 Rule 1 of the **Civil Procedure Rules** and **Sections 1A, 1B & 3A** of the **Civil Procedure Act**.

2. The application seeks the following orders;

a. That this Honourable Court be pleased to grant leave to the Applicant to revive the suit against the Defendant.

b. That the Court be pleased to extend time to substitute the deceased Plaintiff and Defendant.

c. That this Honourable Court do cause the legal representatives of the deceased Plaintiff and Defendant namely Philip Kimutai Langat and Zachariah Kipkoech Bett respectively to be substituted and be made parties in this suit and proceed with this suit on their behalf.

d. That such other and/or further directions be given by this Honourable Court to meet the ends of justice.

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 **Philip Kimutai Langat** sworn on 2nd August, 2024.

Factual Background.

4. The Plaintiff commenced the present proceedings vide the Plaintiff dated 7th September, 2005 which Plaintiff was amended on 7th March, 2007. He seeks the following orders;

a. An order that the transfer of land parcel number Kericho/Sosiot/604 in favour of the Defendant and the subsequent subdivision into Kericho/Sosiot/1655 and 1656 is null and void ab initio.

b. Mesne profits.

c. Costs of the suit.

d. Interest on (a), (b) and (c) above at Court rates.

e. Any other relief this Honourable Court may deem fit.

5. The Defendant filed an “Amended Amended Statement of Defence and Counterclaim” (sic) on 16th September, 2009.

The Defendant seeks that the Plaintiff's suit be dismissed with costs.

6. The Court delivered judgement on 28th April, 2022 and issued the following orders;

a. A Declaration that the transfer of land parcel No. Kericho/Sosiot/604 in favour of the Defendant and the subsequent sub-division into parcels No. Kericho/Sosiot/ 1655 and 1656 was null and void ab initio.

b. The title of the Defendant is hereby cancelled and I direct that his name be removed as proprietor of the land parcel No. Kericho/Sosiot/ 1655.

c. The name of Kiplangat Arap Maina be reinstated as the registered proprietor of the original parcel No. Kericho/Sosiot/604 as per the certificate of Registration dated 2nd June 1972 herein produced as Pf exhibit 1(a).

d. Costs to the Plaintiff at the lower scale since the suit was undefended.

7. After judgement was delivered, the Interested Party/Respondent filed an application dated 31st July, 2023 where he sought that judgement be set aside.
8. The Court delivered a ruling on 21st March, 2024 which ruling set aside the judgement delivered on 28th April, 2022 for the reasons that the suit had abated at the time of delivery of judgement.
9. The application under consideration first came up for hearing on 2nd October, 2024 when the Interested Party/Respondent informed the Court that he had filed a Preliminary Objection.
10. On 7th November, 2024 the Court issued directions that the Preliminary Objection be heard first and be heard by way of written submissions. The Court delivered a ruling on 3rd July, 2025 and dismissed the preliminary objection with costs.

11. The application under consideration came up for hearing on 18th September, 2025 when the Court issued directions that it be heard by way of written submissions.
12. It was mentioned for submissions and reserved for ruling on 11th November, 2025.

The Applicant's contention.

13. The Applicant contends that the Plaintiff instituted the present suit against the Defendant herein vide the Plaint dated 7th September, 2005 which plaint was amended on 7th March, 2007. He goes on to explain that the orders sought in the Amended Plaint were that the transfer of land parcel number **Kericho/Sosiot/604** in favour of the Defendant and the subsequent subdivision into parcel No's **Kericho/Sosiot/1655 & 1656** were null and void ab initio.

- 14.** The Applicant also contends that the Plaintiff is his father and that he (The Plaintiff) executed a power of attorney in his favour to act on his (The Plaintiff's) behalf. The Applicant goes on to state that he gave evidence on his father's behalf while he (his father) was still alive and further that the Plaintiff's case was closed on 28th March, 2012.
- 15.** The Applicant further contends that on 17th December, 2013 his father (the Plaintiff herein) passed on.
- 16.** It is the Applicant's contention that the Interested Party/Respondent herein had also been issued with a power of attorney to prosecute the suit on behalf of his father (the Defendant herein).
- 17.** It is also the Applicant's contention that the Defendant was given an opportunity to give his evidence but he did not attend court. He goes on to state that the Defendant's case was closed on 6th December, 2021.

- 18.** It is further the Applicant's contention that on 28th April, 2022 the Court delivered its judgement and allowed the Plaintiff's suit.
- 19.** He contends that the Court in its judgement found that the subdivision of land parcel No. **Kericho/Sosiot/604** into **1655** and **1656** was null and void and ordered that the name of the Plaintiff be reinstated as the registered proprietor of land parcel No. **Kericho/Sosiot/604**.
- 20.** He also contends that the Interested Party/Respondent herein filed the application dated 31st July, 2023 stating that his father the Defendant died on 23rd December, 2013 and therefore the suit against him had abated.
- 21.** He further contends that the Court delivered a ruling on the said application on 21st March, 2024 and that the Court while relying on **Sections 1B** and **3A** of the Civil Procedure

Act, found that the suit had abated and that since there was no pending application for reinstatement and substitution on record, there was an error apparent on the face of the record and consequently, the judgement delivered on 28th April, 2022 was null and void.

22. It is his contention that from the application dated 31st July, 2023, the Interested Party/Respondent has shown willingness and intention to continue the suit on behalf of the Defendant.

23. It is also his contention that the main issue for determination is whether the Defendant had through fraud pretended to be the Plaintiff herein and caused to be registered as the owner of land parcel No. **Kericho/Sosiot/604** as was held by the Court in its judgement delivered on 28th April, 2022.

24. It is further his contention that the Interested Party/Respondent is now employing technicalities to

safeguard his father's fraudulent acts which should not be countenanced by this Court.

- 25.** He contends that the Court in its judgement delivered on 28th April, 2022 analyzed the evidence and found in the Plaintiff's favour save that there was an error on the face of the record which was to the effect that the parties to the suit had died and were not substituted.
- 26.** He also contends that the said error was not fatal to the suit and was curable in law by making an application for reinstatement and substitution as provided for under **Order 24 Rule 7(2)** of the **Civil Procedure Rules**.
- 27.** He further contends that it is imperative to note that the Plaintiff had testified and closed his case during the lifetime of the Defendant and that it was only the Defendant who had not testified.

- 28.** It is his contention that he is the legal representative of the deceased Plaintiff while the Interested Party/Respondent is the legal representative of the deceased Defendant.
- 29.** It is also his contention that he has been advised by his advocates on record that this is a Court of Law and equity and that equity cannot suffer a wrong without remedy.
- 30.** It is further his contention that he had earlier filed an application which was dismissed on 25th July, 2024 on the ground that he had not availed evidence that he was the legal representative of the estate of the deceased Plaintiff.
- 31.** He contends that this Court should not allow the Defendant to benefit from his wrong doing and he therefore invites the Court to reinstate the suit and substitute the parties in order for substantive justice to be rendered.

- 32.** He also contends that it is in the interest of justice that the application be allowed and the respective legal representatives continue the suit on behalf of both the Plaintiff and the Defendant as substantive justice should be delivered without undue regard to technicalities.
- 33.** He ends his deposition by stating that he has demonstrated sufficient cause for revival of the suit and substitution of the deceased Plaintiff and Defendant.

The Interested Party/Respondent's Response.

- 34.** In response to the application, the Interested Party/Respondent filed a Replying Affidavit sworn on 7th November, 2025.
- 35.** He deposes that the matter proceeded *ex parte* on 25th July, 2019 and the deceased Defendant's Counsel did not attend Court because he was unwell.

- 36.** He also deposes that the matter was set down for defence hearing severally but the hearing did not proceed because Counsel for the deceased Defendant was sick.
- 37.** He further deposes that on 12th April, 2015, the Court was informed that Counsel for the deceased Defendant had been sick for six months.
- 38.** It is his deposition that on 3rd June, 2015, the Court was informed that both the Plaintiff and the Defendant were deceased and the Court issued directions that the deceased parties be substituted to enable the matter proceed to its logical conclusion.
- 39.** It is also his deposition that on 4th July, 2017, Counsel for the deceased Plaintiff sought leave to serve the Defendant personally with the hearing date since his Counsel's office was no longer operational.

- 40.** It is further his deposition that the matter was scheduled for Defence hearing on 7th November, 2018 which hearing did not proceed.
- 41.** He deposes that a Notice for Dismissal for want of prosecution was issued and on 25th July 2012 (sic) Counsel for the deceased Plaintiff sought that the Defence case be closed.
- 42.** He also deposes that the Defence case was closed and the matter mentioned on 24th February, 2022 before judgement was delivered on 28th April, 2022.
- 43.** He further deposes that he filed an application dated 31st July, 2023 which application was allowed on 21st March, 2024 and the judgement delivered on 28th April, 2022 set aside.
- 44.** It is his deposition that the Applicant filed an application dated 15th April, 2024 seeking for the revival of the abated

suit which application was dismissed on 25th July, 2024. He goes on to state that in the said application, the Applicant failed to disclose to the Court he was issued with Letters of Administration in the year 2017.

45. It is also his deposition that the Defendant died on 23rd December, 2013 while the Plaintiff died on 17th December, 2013.

46. It is further his deposition that he was not joined to the present proceedings and neither was he a holder of the Defendant's power of attorney.

47. He deposes that the Applicant was issued with Letters of Administration for the estate of the deceased Plaintiff on 26th April, 2017.

48. He also deposes the Applicant's application for revival is therefore an afterthought and an abuse of the Court process.

- 49.** He further deposes that the Applicant ought to have made the application for revival and substitution under **Order 24 Rule 7(2)** of the **Civil Procedure Rules** as soon as he was issued with Letters of Administration.
- 50.** It is his deposition that the Applicant took no action between 4th July, 2017 till a notice for dismissal for want of prosecution was issued on 6th December, 2021.
- 51.** It is also his deposition that it has been twelve years since the deceased Plaintiff died and eight years since the Applicant obtained Letters of Administration with respect to his estate.
- 52.** It is further his deposition that the application under consideration is *res judicata* since the Court already dealt with a similar application and delivered a ruling on 25th July, 2024.

53. He ends his deposition by stating that the application under consideration is an abuse of the Court process and ought to be dismissed with costs.

Issues for Determination.

54. Both the Applicant and the Interested Party/Respondent filed their submissions on 11th November, 2025.

55. The Applicant submits on the following issues;

a. Whether the Court has jurisdiction to revive the abated suit.

b. Whether sufficient cause has been shown to warrant revival and extension of time for substitution; and

c. Whether substitution of the deceased Plaintiff and Defendant is merited in the interests of justice.

56. The Applicant relies on **Sections 1A, 1B & 3A** of the Civil Procedure Act, **Order 24 Rules 3, 4 & 7(2)** of the Civil Procedure Rules, **Article 159(2)(d)** of the Constitution and

submits that the Court has inherent and discretionary jurisdiction to revive a suit that has abated.

- 57.** The Applicant also submits that the Court can where sufficient cause is demonstrated, extend time for substitution and allow for substitution of deceased parties.
- 58.** On the second issue, the Applicant relies on **Order 24 Rule 7(2)** of the Civil Procedure Rules, the judicial decision of **Mbaya Nzulwa vs Kenya Power & Lighting Co. Ltd [2018] KEHC 8061 (KLR)** and submits that there is sufficient cause to revive the suit.
- 59.** The Applicant also submits that before the death of the plaintiff, a power of Attorney was executed and that the said power of attorney enabled him to testify on the Plaintiff's behalf.

- 60.** The Applicant further submits that the Plaintiff's case was closed on 28th March, 2012.
- 61.** It is the Applicant's submissions that upon the demise of the Plaintiff, he promptly moved the Court and sought for substitution and revival.
- 62.** It is also the Applicant's submissions that his earlier application was dismissed on the ground that he did not provide proof of legal representation and that the present application seeks to correct that procedural gap.
- 63.** The Applicant relies on the judicial decision of **Rebecca Mijide Mungole & another vs Kenya Power & Lighting Co. Ltd & 2 Others [2017] eKLR** and submits that sufficient cause is a question of fact.

- 64.** The Applicant also submits that the Court should be guided by the need to do substantive justice rather than shut down parties due to procedural lapses.
- 65.** The Applicant further submits that the present suit should be revived in order for it to be determined on merit.
- 66.** On the third issue, the Applicant submits that **Order 24 Rules 3(2) & 4(3)** of the Civil Procedure Rules provides for a one-year period for substitution of a deceased party.
- 67.** The Applicant also submits that the Court has discretion to enlarge time for substitution under **Sections 3A & 95** of the **Civil Procedure Act.**
- 68.** The Applicant reiterates that he made efforts to substitute the deceased parties within good time but did not succeed because of the oversight of attaching proof of legal representation.

- 69.** On the fourth issue, it is the Applicant's submissions that he is seeking that he be substituted in the present proceedings on behalf of the deceased Plaintiff and the Interested Party/Respondent be substituted in place of the deceased Defendant.
- 70.** The Applicant relies on **Article 159 (2)(d)** of the Constitution of Kenya, the judicial decisions of **John Mutua Kathurima vs Francis Mulei Mbuvi [2019]eKLR, Lemanken Aramat vs Harun Meitamei Lempaka & 2 Others [2014] eKLR** and submits that the substitution will not prejudice the Interested Party/Respondent in any way as the cause of action is still intact and the parties will be given an opportunity to ventilate their cases.
- 71.** The Applicant also submits that the suit abated due to unavoidable procedural circumstances and reiterates that there is sufficient cause for the suit's revival, extension of

time to substitute and the substitution of the deceased parties.

- 72.** The Interested Party/Respondent in his submissions sets out the averments in his Replying Affidavit, relies on **Order 24 Rule 7(2)** of the Civil Procedure Rules 2010 and submits that the legal representative of a deceased Plaintiff must demonstrate that he/she was prevented by sufficient cause from continuing the suit in order for it to be revived by the Court.
- 73.** It is the Interested Party/Respondent's submissions that the Applicant has not demonstrated sufficient reasons for the delay in seeking to revive the suit.
- 74.** It is also the Interested Party/Respondent's submissions that the Applicant was issued with Letters of Administration on 26th April, 2017 but did not seek to revive the suit immediately.

- 75.** It is further the Interested Party/Respondent's submissions that the Applicant has failed to discharge the burden of showing that he was prevented by any sufficient cause from continuing with the suit.
- 76.** The Interested Party/Respondent relies on the judicial decision of **Rebecca Mijinde Mungole & another vs Kenya Power Lightning Company Limited & 2 Others [2017] KECA 544 (KLR)** in support of his submissions.
- 77.** The Interested Party/Respondent submits that the Applicant had earlier on filed an application which sought orders that are similar to the present application.
- 78.** The Interested Party/Respondent also submits that the Court delivered a ruling on the said application on 25th July, 2024.
- 79.** The Interested Party/Respondent further submits that the application under consideration is therefore *res judicata*.

80. The Interested Party/Respondent relies on **Section 7** of the **Civil Procedure Rules**, the judicial decision of **Waso Building & Works Co. Ltd vs Galgalo & 5 Others (Environment & Land Case (E004 of 2022) [2025] KEELC 4719 (KLR) (23RD June 2025) (Ruling)** and urges the Court to dismiss the Applicant's application with costs.

Analysis and Determination.

81. I have considered the Applicant's application, the response thereto and the rival submissions. It is my view that the following issues arise for determination;

a. Whether the application dated 2nd August, 2024 is res judicata.

b. Whether the application dated 2nd August, 2024 has merit.

c. Who should bear costs of the application.

A. Whether the application dated 2nd August, 2024 is res judicata.

82. The Interested Party/Respondent contends that the Applicant filed an application dated 15th April, 2025 (sic) which was subject of the ruling delivered on 25th July, 2024.

83. The Interested Party/Respondent also contends that in the said application, the Applicant sought for revival of the suit and the substitution of the deceased Plaintiff and deceased Defendant.

84. The Interested Party/Respondent further contends that the application under consideration is a replica of the previous application and it is therefore *res judicata*.

85. The Applicant did not address this issue in his submissions.

86. Section 7 of the **Civil Procedure Act** provides as follows;

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former

suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

87. In Communications Commission of Kenya & 5 others - v- Royal Media Services Limited & 5 others [2014] eKLR the Supreme Court expressed itself as follows on the issue of *res judicata*:

“[317] The concept of res judicata operates to prevent causes of action, or issues from being re-litigated once they have been determined on the merits. It encompasses limits upon both issues and claims, and the issues that may be raised in subsequent proceedings....

[319]There are conditions to the application of the doctrine of res judicata: (i) the issue in the first suit must have been decided by a competent Court; (ii) the matter in dispute in the former suit between the parties must be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and (iii) the parties in the former suit should be the same parties, or parties under whom they or any of them claim, litigating under the same title Karia and Another v. The Attorney General and Others, [2005] 1 EA 83, 89.

(Emphasis supplied)” (Emphasis mine)

88. The Court of Appeal in **Uhuru Highway Development Limited v Central Bank of Kenya & 2 others**

[1996] KECA 102 (KLR) held as follows;

“...That is to say, there must be an end to applications of similar

nature; that is to say further, wider principles of res judicata apply to applications within the suit. If that was not the intention, we can imagine that the courts could and would be inundated by new applications filed after the original one was dismissed. There must be an end to interlocutory applications as much as there ought to be an end to litigation.

(Emphasis mine)

89. The Interested Party/Respondent in his Replying Affidavit contends that the Applicant filed an application dated **15th April, 2025** (The court record shows that the application is dated 15th April 2024) which was subject of the ruling delivered on 25th July, 2024.

90. The Applicant admits to have filed an application seeking the revival of the suit which application was dismissed on 25th

July, 2024. The Applicant explains that it was dismissed on the ground that he had failed to attach proof that he was the legal representative of the estate of the deceased Plaintiff.

91. In order to ascertain whether or not the application dated 2nd August, 2024 is *res judicata*, the Court has to probe both the applications dated 15th April, 2024 and 2nd August, 2024 and the ruling delivered on 24th July 2024.

92. The application dated 15th April, 2024 sought the following orders;

a. That this Honourable Court be pleased to grant leave to the Applicant to revive the suit against the Defendant.

b. That the Court be pleased to extend time to substitute the deceased Plaintiff and Defendant.

c. That this Honourable Court do cause the legal representatives of the deceased Plaintiff and Defendant namely Philip Kimutai

Langat and Zachariah Kipkoech Bett respectively to be substituted and be made parties in this suit and proceed with this suit on their behalf.

d. That such other and/or further directions be given by this Honourable Court to meet the ends of justice.

e. That the costs of this application be in the cause.

93. The orders sought in the application under consideration has been set out in the preceding paragraphs but I will nonetheless replicate them as hereunder;

a. That this Honourable Court be pleased to grant leave to the Applicant to revive the suit against the Defendant.

b. That the Court be pleased to extend time to substitute the deceased Plaintiff and Defendant.

c. That this Honourable Court do cause the legal representatives of the deceased Plaintiff and Defendant

namely Philip Kimutai Langat and Zachariah Kipkoech Bett respectively to be substituted and be made parties in this suit and proceed with this suit on their behalf.

d. That such other and/or further directions be given by this Honourable Court to meet the ends of justice.

e. That the costs of this application be in the cause.

94. The affidavits in support of the applications dated 15th April, 2024 and 2nd August, 2024 are sworn by **Philip Kimutai Langat**.

95. Paragraphs **39**, **42** and **43** of the ruling delivered in respect of the former application i.e. application dated 15th April 2024 are as follows:

“39. A perusal of the Applicant’s application dated 15th April, 2024 shows that no grant of letters of administration of the Estate of the

deceased Plaintiff Kiplangat Arap Maina has been annexed...

42. As previously stated, no grant of letters of administration has been annexed to the Applicant's application to show that he is the Legal Representative of the estate of the deceased Plaintiff. That being the case, this Court cannot revive an abated suit where no legal representative has been appointed for the estate of the deceased Plaintiff.

43. The upshot of the foregoing is that the Applicant's application dated 15th April, 2024 lacks merit and it is hereby dismissed with no order as to costs."

96. It is therefore evident that the application dated 2nd August, 2024 is a replica of the application dated 15th April 2024, which was heard and determined. It also goes without saying that the parties in both applications are the same. The Applicant failed to place evidence before the Court to have the former application determined in his favour and caused the application to be dismissed. This mistake cannot be cured by filing a similar application and the fact of filing a similar application is tantamount to abusing the Court process.

97. Therefore, I find that the application under consideration is *res judicata*.

B. Whether the application dated 2nd August, 2024 has merit.

98. Based on my finding that the instant application is *res judicata*, it shall not be necessary to interrogate the merits of it.

Disposition.

99. Taking the foregoing into consideration, I find that the application dated 2nd August, 2024 is *res judicata* and it is hereby dismissed with costs.

100. 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: -
Miss Otieno for the Applicant.**

Mr. Koske for the Interested party- Absent.

Court Assistant; Mr. Joseph Makori.

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