

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAJIADO
ELCC E013 OF 2021

NORMASI ENE MUSA MESHOI
PLAINTIFF

VERSUS

MUSA OLE SALAASH MESHOI 1ST
DEFENDANT KELENYI OLE
POLONG2ND DEFENDANT ANGELA
NASIEKU3RD DEFENDANT
KERIANGO OLE KAPOLO SAXINO4TH
DEFENDANT FRANKLIN WERE
JUMA5TH DEFENDANT TUBERO LE
MUSA MESHOI6TH DEFENDANT
YIAMPENOI TUKERO MUSA7TH
DEFENDANT MARY WANJIRU
MURANGA8TH DEFENDANT RUKIA
ASMAN9TH DEFENDANT
NICHOLAS OCHIENG10TH
DEFENDANT

RULING

(In respect of the Plaintiff/Applicant's Motion dated 22nd July, 2025)

Introduction

1. This Ruling is in respect of the Plaintiff/Applicant's Notice of Motion dated 22nd July, 2025 brought under Sections 1A, 1B, 3, 3A and 95 of the Civil Procedure Act and Order 1 Rule, Order 24 Rule 3(1) and (2), 5, 7(2), Order 50 Rule 6 and Order 51 of the Civil Procedure Rules. Through the Motion, the Applicant seeks for following orders;

(a) Spent

(b) That the time within which to substitute the Plaintiff (deceased) be extended.

(c) That the suit herein be revived.

(d) That the deceased (Normasi Ene Musa Meshoe) be substituted with the Applicant Tip Tip Meshoe,

(e) That the Applicant be allowed to amend the Plaintiff and file statements if need be.

2. The Application is premised on grounds that following the demise of the Plaintiff, **Normasi Ene Musa Meshoi** on **29 December, 2023**, **Tip Tip Meshoe** was issued with letters of Administration *Ad Litem* in Kajiado High Court **HCFP&A/E071/2025** on **17 July, 2025** for purposes of reviving, filing and or defending this suit on behalf of the deceased estate. It is stated that the delay in filing this application was occasioned by the impression that the court had appointed the Applicant to prosecute this suit. However the court on **10th July, 2025** declared that the suit had **abated**.
3. The Motion is supported by the Affidavit of **Tip Tip Meshoe** sworn on **22nd July, 2025** whose averments echo the grounds on the face of the Motion.
4. The Application is opposed by the **2nd Defendant, Kelenyi Ole Polong** through his Replying Affidavit sworn on **30th September, 2025** who deposes that no convincing nor plausible explanations have been tendered demonstrating why there was a delay in filing this application seeking revive the Plaintiff's abated suit. Thus, it is unfair to deprive the other parties their valuable accrued legal right due to a party's' neglect or indifference in pursuing their rights and remedies. According to the Deponent, the Applicant has not demonstrated sufficient cause

why he never continued this suit or why the Plaintiff was not appropriately substituted following his demise.

Courts directions

5. The court's directions were that the application be canvassed through written submissions. Although **Mr. Kitela** holding brief for **Mr. Kamwaro** for the 1st and 2nd Defendants informed the court that they had filed their submissions, the court record does not reflect this position. Nonetheless, the court will proceed to consider the application. The Plaintiff's submissions are dated 22nd October, 2025.

Issue for determination

6. The key issue for determination after careful analysis of the application is whether the suit should be revived and the Applicant allowed to substitute the deceased Plaintiff.

Determination

7. Before proceeding to make my determination on whether the application is merited or not, it is important that I provide a background of this suit. The Plaintiff (deceased) instituted it against the Defendant on 9th March, 2021 through a Plaint dated 9th May, 2021. The Plaintiff accused the 1st Defendant of fraudulently subdividing **KAJIADO/DALALEKUTUK/158** into **KAJIADO/DALALEKUTUK/1381** and **1381**. The Plaintiff contended that in 2021, she found out that the 1st Defendant had fraudulently further subdivided **KAJIADO/DALALEKUTUK/1381**, sold it and later transferred it to the Defendants without consulting her. Consequently, she sought that the court declares her the rightful and lawful owner of **KAJIADO/DALALEKUTUK/1381**, revocation of its resultant subdivisions issued to the 1st Defendant and an order directing the Kajiado District Land Registry to rectify the title.

8. The 1st and 2nd Defendants dispute the Plaintiff's allegations levelled against them in their Statement of Defence dated 23rd April, 2021. With respect to **KAJIADO/DALALEKUTUK/1381**, it was pleaded that the Plaintiff fully participated in its sale, consented and approved its sale and that its resultant subdivision being **KAJIADO/DALALEKUTUK/1731** was procedurally and lawfully sold to the 2nd Defendant.
9. The court records show that in the course of these proceedings, the 5th Defendant Preliminary Objection seeking dismissal of the Plaintiff's suit on grounds that it was statutory time barred under Section 7 of the Limitation of Actions Act was dismissed through a Ruling delivered on 20th April, 2022 by **M.N. Gicheru J** after the court found it to be unwarranted. What triggered the Applicant to file this application which is the subject of this Ruling is the order issued on 10th July, 2025. While making a determination would be adopted as a judgement of the court, this court established that there was no proper or competent suit before it because the Plaintiff's suit had abated under Order 24 Rule 4(3) of the Civil Procedure Rules following her demise on 1st December, 2023 and she had not been substituted accordingly.
10. Order 24 Rule 3 of the Civil Procedure Rules upon which this application is premised on provides that if a Plaintiff dies during the pendency of a suit, his/her cause of action shall survive them. However, this is only applicable if his/her legal representative files an application seeking their substitution within a year following his/her death failure to which the suit shall abate. Under Order 24 Rule 7 of the Civil Procedure Rules, an abated suit may be revived if the legal representative of the deceased Plaintiff files an application seeking for its revival. These provisions were summarized by the Court of Appeal in *Said Sweilem*

Gheithan Saanum v Commissioner of Lands (being sued through Attorney General) & 5 others [2015] KECA 284 (KLR) as follows

(1) There are three stages according to these provisions. As a general rule the death of a plaintiff does not cause the suit to abate if the cause of action survives. But within one year of the death of the plaintiff or within such time as the court may in its discretion for “good reason” determine, an application must be made for the legal representative of the deceased plaintiff to be made a party. The “good reason” therefore relates to application for extension of time to join the plaintiff’s legal representative to the suit.

(2) Secondly, if no such application is made within one year or within the time extended by leave of the court, the suit shall abate. Where a suit abates no fresh suit can be brought on the same cause of action.

(3) Thirdly, the legal representative of the deceased plaintiff may apply for the abated suit to be revived after satisfying the court he was prevented by “sufficient cause” from continuing with the suit. The effect of an abated suit is that it ceases to exist in the eye of the law. The abatement takes place on its own force by passage of time, a legal consequence which flows from the omission to take the necessary steps within one year to implead the legal representative of the deceased plaintiff.

11. Counsel for the Applicant has quoted the decision in *Marucha v Marucha & Another; Mofire (Applicant) [2005] KEELC 6838 (KLR)*, to argue that sufficient reasons have been demonstrated showing why the application seeking to revive the Plaintiff’s suit was not lodged within sufficient time. The Applicant asserts that he was under the impression that this court had authorized him to prosecute the suit after filing his letter of administration.

12. Documents filed in support of the application show that the Applicant petitioned the High Court for Letters of Administration *Ad Litem* after the dismissal of the application seeking adoption of the proposed consent as a judgment of this court. After obtaining the grant on 17th July, 2025, the Applicant filed this application seeking revival of the suit and his substitution with the deceased Plaintiff. Clearly, the application was filed without inordinate delay and the court is persuaded that sufficient cause has been demonstrated. To meet the ends of justice as envisioned under Article 159(2)(d) of the Constitution, Section 1A(1) of the Civil Procedure Act (Cap. 21) and Section 3(1) of the Environment and Land Court Act (Cap. 8D), I find that Plaintiff /Applicant's Notice of Motion dated 22nd July, 2025 is merited. Consequently, I hereby proceed to allow it in the following terms;

- a) The suit is hereby revived.*
- b) An order is hereby issued extending timelines within which the Applicant, Tip Tip Meshoe shall substitute the deceased Plaintiff.*
- c) The Plaintiff Normasi Ene Musa Meshoi (deceased) is hereby substituted with her legal personal representative Tip Tip Meshoe in this suit.*
- d) The Applicant is hereby granted leave to amend the Plaint as per the annexed Amended Plaint.*
- e) The draft amended Plaint annexed to the application and the witness statement is hereby deemed as duly filed upon payment of the requisite court filing fees.*
- f) The costs of this application shall be in the cause.*

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 19th Day of February 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Itaya for the Plaintiff/Applicant

N/A by the Defendants

Court Assistant: Mpoye

M.D. MWANGI
JUDGE