

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCC NO. E083 OF 2023

ROSELYN DOLA OUKO.....1ST

PLAINTIFF/RESPONDENT

AARON TAFARI OUKO.....2ND

PLAINTIFF/RESPONDENT

VERSUS

MARTIN FRANCIS THUKU

WAITHAKA.....DEFENDANT/APPLICANT

RULING

1. The defendant/applicant filed the notice of motion dated 9th December 2025 expressed to be brought under **Sections 1A,1B** and **3A** of the **Civil Procedure Act** and **Order 2 Rules 15 1(b)** and **(d)** of the **Civil Procedure Rules** seeking the following orders:

- 1) *The suit filed herein be and is hereby struck out.***
- 2) *The applicant be awarded costs of this application and the suit.***

2. The application is premised on the grounds on its face, and further supported by the affidavit of Margaret Nyambara

Waithaka, the administrator of the estate of Martin Francis Thuku Waithaka (deceased) which was sworn on even date. The applicant deposed that the defendant is her late husband, who died on 26th April, 2018. She deposed that she was issued with the letters of administration dated 29th April, 2019 vide Milimani Succession Cause No. 1325 of 2018, and that the said grant was confirmed on the 16th of September, 2020.

3. The applicant deposed that the death of the defendant and her appointment as administrator is a well-known fact to the plaintiffs since they were involved in HCCC E148 of 2021. Further, that the 2nd plaintiff/respondent signed a witness statement dated 5th August, 2021 which he acknowledged this fact and appeared in court and testified under oath on 26th May, 2023 to the same fact as well.
4. It was deposed that plaintiffs' deposition in the affidavit of service that they served the deceased with summons to this suit is a blatant lie. She contended that a suit cannot be instituted against a dead person, thus this suit is a nullity and ought to be struck out.

5. The plaintiffs/respondents did not file their response to the instant application. The application was canvassed through written submissions. The defendant/applicant through the legal administrator filed her written submissions dated 6th February, 2026.
6. I have considered the application and the written submissions filed. The crux of the application is that the plaintiffs/respondents filed this suit and alleged to have served the pleadings to the defendant herein through the affidavit of service sworn on the 15th of August, 2023. However, the legal administrator of the defendant's estate confirmed that the defendant has actually been deceased since 26th April, 2018 therefore the said affidavit of service clearly contains falsehoods as the process server could not have served someone who is already deceased.
7. The defendant/applicant annexed a copy of the defendant's certificate of death which evidenced that he indeed died on the 26th of April, 2018. She also exhibited marked as MNW-5 a copy of the letter dated 15th September, 2025 that the learned counsel

wrote to the plaintiffs' counsel, clearly informing them that the defendant was deceased and that they should withdraw the case against him. The plaintiffs'/respondents' counsel did not take any step to remedy the position of the defendant in the suit.

- 8. Section 79 of The Law of Succession Act Cap 160** provides that the property of a deceased person is to vest in the personal representative and states that:

“The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

- 9.** In the case of **Julian Adoyo Ongunga v Francis Kiberenge Abano Civil Appeal No. 119 of 2015**, Justice A. Mrima stated as follows:-

“The impact of a party without locus standi can be equated to that of a court acting without jurisdiction. Since it amounts to null and void proceedings. It is also worth noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person

since in most cases the estate involves several other beneficiaries or interested parties. In this matter therefore the respondent lacked the requisite locus standi to institute and/or maintain the suit. The result is that all the proceedings before the trial court were instituted and maintained by a person who lacked the legal capacity to do so. They are indeed a nullity and as such lack the legal leg to stand on.”

- 10.** In the case of **Naikuni v Naikuni & 7 others; Manyuele (Applicant) (Environment & Land Case 9 of 2023) [2025] KEELC 3064 (KLR)** the court observed that:-

“It is trite that a dead person cannot be sued, and technically, a suit filed against a deceased person is invalid and a nullity from inception. This court was referred to the case of Manyange (Deceased) v TG (Minor suing through her mother and next friend WMG) (Civil Appeal E005 of 2022) [2024] KEHC 1083 (KLR) (7 February 2024) (Ruling), which quoted with approval the Indian case of C. Muttu v. Bharath Match Works AIR 1964 Kant 293, where the court observed as follows;“If he (defendant) dies before the suit and a suit is brought against him in the name in which he carried on business, the suit is against a dead man and it is a nullity from its inception. The suit being a nullity, the writ

of summons issued in the suit by whomsoever accepted is also a nullity. Similarly, an order made in the suit allowing amendment of plaint by substituting the legal representative of the deceased as the defendant and allowing the suit to proceed against him is also a nullity. It is immaterial that the suit was brought bona fide and in ignorance of the death of such a person.”

- 11.** From the above and having looked at the defendant’s certificate of date indicating that he died on 26th April, 2018 I find that this suit is a nullity. The plaint dated 25th January, 2023 is hereby struck out. I make no order as to costs since the defendant has no proper legal standing in the suit.

It is so ordered.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 12TH DAY OF MARCH, 2026.**

**HON. MBOGO C.G.
JUDGE
12/03/2026.**

In the presence of:

Ms. Benson Agunga - Court assistant

Ms. Wanjiru holding brief for Mr. Oduk for the Plaintiff/Respondent

No appearance for the Defendant /Applicant