

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 667 OF 2009

GEORGE KURIA MWAURA

PLAINTIFF

VERSUS

JOYCE GATHONI KIARIE

Sued as the Legal Administratrix of the Estate of

JOSEPH WANYOIKE KIARIE 1ST

DEFENDANT

THE PRINCIPAL REGISTRAR OF TITLES 2ND

DEFENDANT

THE COMMISSIONER OF LANDS 3RD

DEFENDANT

JANE WANJIRU KURIA &

ANNE WAMBUI KURIA

APPLICANTS

RULING

ELC CASE NO. 667 OF 2009

Ruling

1. What is before the Court for determination is the Applicants' Notice of Motion application dated 27th November 2025 where they seek the following Orders:

a) Spent.

b) That the Honourable Court be pleased to grant an extension of time to enable the deceased Plaintiff's legal representatives, namely Jane Wanjiru Kuria and Anne Wambui Kuria be enjoined in the suit.

c) That upon joinder, the Honourable Court be pleased to revive the suit herein which has abated by operation of law.

d) That the Honourable Court be pleased to order the substitution of the deceased Plaintiff with his legal representatives, the Applicants' herein.

e) That the Applicants be granted leave to amend the plaint and/or pleadings filed herein on behalf of the deceased's Plaintiff accordingly.

f) That the costs of this application be provided for.

2. The application is premised on grounds on its face and on the affidavit of Jane Wanjiru Kuria, a widow to the Plaintiff. She avers that her husband died intestate on 6th April 2024, during the pendency of the suit and that he had already testified and closed his case that revolves around ownership of **LR No. 209/9943**, Parklands which he is registered to as owner. Further, that upon his demise, family disagreements arose regarding administration of his estate thus she was unable to petition the Court immediately for Letters of administration until January 2025, when she did vide **Milimani Misc. Succession Cause No. E058 of 2025**. Further, in the said matter, she had to file a certificate of urgency seeking an earlier date given that the instant suit was due to abate on 6th April 2025 and upon considering her application, the subordinate court issued a Limited Grant of Letters of Administration Ad Litem on 8th April 2025, two days after the suit had abated.

3. She points out that the suit parcel forms part of the deceased Plaintiff's estate. Further, that there is also a pending appeal being **Nairobi Civil Appeal No. 40 of 2020** filed by the 1st Defendant herein where the deceased Plaintiff is the Respondent thus grant of the orders sought herein will also enable her to substitute the deceased Plaintiff in the matter before the Court of Appeal. She reiterates that no prejudice will be suffered by Defendants.

Response

4. The application is opposed by the 1st Defendant who filed Grounds of Opposition. She contends that the suit abated automatically on 6th April 2025 by operation of law, pursuant to Order 24 Rule 3(2) of the Civil Procedure Rules thus the application for substitution is incurably defective for being filed outside the stipulated timeline of one year.
5. Further, that although the Applicants attribute the delay to the Court's

alleged delay in issuing the Limited Grant ad Litem, they have failed to offer sufficient explanation for the initial delay of nearly seven months in applying for the said Grant after being issued with a Limited Grant.

6. The 2nd and 3rd Defendants did not file any response.
7. The application was canvassed by way of written submissions.

Submissions

8. The Applicants submit that an abated suit can be revived by the Court under Order 24 Rule 7(2) of the Civil Procedure Rules and urges the Court to exercise discretion and ensure substantial justice on merits rather than technicalities, noting that the effect of abatement is drastic as it extinguishes the Plaintiff's cause of action and bars the filing of a fresh suit.
9. They reiterate their reasons for delay in filing the application and aver that it is brought in good faith. Further, that it is

pertinent to revive the suit and enable the court to proceed with the Defendant's case, the Plaintiff having closed his case.

10. On her part, the 1st Defendant submits that under Order 24 Rule 3(1) of the Civil Procedure Rules, an application to substitute a deceased Plaintiff is to be made within one year thus the application is not merited.
11. Further, that to revive an abated suit under Order 24 Rule 7(2) of the Civil Procedure Rules, an Applicant must prove they were prevented by sufficient cause from continuing the suit and that the reasons the Applicants gave is a legally insufficient excuse as disagreements within a family cannot override statutory limitation periods or the rights of a Defendant to have litigation concluded.
12. Further, that there was a clear-cut delay of seven months to prosecute the matter after the Grant was obtained and the same was not explained. He reiterates that to revive a 16-

year-old suit that abated due to the Applicants' own lethargy would be to visit gross injustice upon her.

13. To buttress her averments, the 1st Defendant relied on the following decisions: **Said Sweilem Gheithan Saanum v Commissioner of Lands (being sued through Attorney General) & 5 others [2015] KECA 284 (KLR)**, **Charles Mugunda Gacheru v Attorney General & another [2015] KEELC 394 (KLR)**, **Titus Kiragu v Jackson Mugo Mathai & another [2013] KEHC 6785 (KLR)** and **Clement Shikami Muhanji v Charles Fendo v Jelesencia Iseri Namale; (Applicant) Vincent Shikami Clement (Interested Party) [2021] KEELC 2411 (KLR)** where the Court held that while the death of a Plaintiff is a tragedy, it does not grant the legal representatives a carte blanche to ignore procedural timelines.

Analysis and Determination

14. Upon consideration of the instant Notice of Motion application including the supporting affidavit, Grounds of **ELC CASE NO. 667 OF 2009** **Ruling**

Opposition and rivalling submissions, the only issue for determination is whether this suit which abated on 6th April 2025 by operation of law pursuant to Order 24 Rule 4 of the Civil Procedure Rules should be revived and the Applicants be allowed to substitute the Plaintiff and to amend the Plaint accordingly.

15. The Applicants have sought for the revival of the abated suit as well as for the substitution of the deceased including amendment of the Plaint. The legal provisions governing revival of abated suits is contained in **Order 24 Rule 7 (2) of the Civil Procedure Rules** which stipulates inter alia:

“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.”

16. On a keen reading of these above legal provisions, it is clear that the power to revive a suit or extend the time for substitution of a deceased party in a suit is at the Court’s discretion. Further, that the only duty that the Court has is to assess if there exists a sufficient cause that prevented the parties from continuing with the suit earlier.

17. On what amounts to sufficient cause, the Court of Appeal in **Hon. Attorney General Vs the Law Society of Kenya & Another Civil Appeal (Application) No. 133 of 2011** defined the same as follows:

“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 Blacks 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”.

18. The Applicants explained that delay in petitioning for letters of administration of the Plaintiff’s estate was occasioned by family disagreements regarding administration of his estate and delays occasioned by the subordinate court in **Milimani Misc. Succession Cause No. E058 of 2025.**

19. On her part, the 1st Defendant contends that the reasons the Applicants proffered are insufficient to override statutory limitation periods or the rights of a Defendant to have litigation concluded. She avers that the delay of seven months after the Grant was obtained was not explained.

20. In **Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others [2017] eKLR**, the Court of Appeal stated as follows:

“A prayer for the revival of the suit cannot be allowed

as a matter of course or right. If the applicant demonstrates and the court is satisfied that he was prevented by any sufficient cause from continuing the suit, the court will allow the revival of the suit upon such terms as to costs or otherwise as the court may think fit. The operating phrase in rule 7 (2) 'sufficient cause has been broadly and liberally defined, in order to advance substantial justice Liberal construction should not be done with the result that one party is thereby prejudiced. When the delay is on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the applicant, the court will not revive the abated suit. If a party has been negligent or indifferent in pursuing his rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to him in law. The explanation has to be reasonable and plausible, so as to persuade the Court to believe that the explanation rendered is not only true, but justifies exercising judicial discretion in favour of the applicant.'

21. The Court of Appeal also stated as follows in **Said Sweilem Gheithan Saanum v Commissioner of Lands (being sued through Attorney General) & 5 Others [2015] eKLR:**

“...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.”

22. From the evidence presented, I note the Applicants filed the instant application, one year and seven months after obtaining the Grant Ad Litem from the Succession Court. The Applicant explained that by the time she obtained the Grant Ad Litem, the suit had abated. She further explained that the delay was occasioned by disagreements among the

beneficiaries. From the Court record, I note the suit had abated after the deceased had testified and closed his case.

23. The Court of Appeal in **Issa Masudi Mwabumba vs Alice Kavenya Mutunga & 4 others [2012] eKLR, Koome, JA (as she then was)** while dealing with an application filed after two years and eight months to revive an abated Appeal held that:

“This application was made two years and eight months after the appeal had abated. The explanation offered by the applicant is that the Advocate Mr Abdallah failed to take the steps because the court diary did not have dates. It is also to be noted that the appeal was filed by the deceased in person. By a notice of appointment filed on 20th July, 2011, the firm of Timamy & Company Advocates came on record as having been instructed by the applicant as the legal representative of the deceased. 9. Besides the principles set out in the case of Leo (supra), I am also guided by the provisions of Section 3A and 3B of the

Appellate Jurisdiction Act otherwise known as the oxygen principle. Stemming from the overarching objectives in the administration of justice the goal is at the end of day, the court attains justice and fairness in the circumstances of each case. This is the same spirit that is envisaged as the thread that kneads through the Constitution of Kenya, 2010 in particular Article 159. 10. Bearing in mind those overarching objectives, this appeal deserves to be revived for the following reasons: firstly, the appellant was acting in person when he filed the appeal. Secondly, an advocate was instructed but he did not take the necessary steps to revive the appeal; although no reasons have been given for the advocate's failure, his failure or mistakes cannot be attributed to the applicant. Thirdly, the applicant has a limited grant of letters of administration in respect of the deceased's estate. Although the limited grant gives the applicant power to file a suit, that power can also be construed to include prosecuting an appeal. The fourth reason for allowing the revival of the suit is for reasons that the

dispute involves ownership of land and a durable solution that addresses the substantive issues is always a better option.

24. Based on the facts as presented while relying on the legal provisions cited and associating myself with the decisions quoted, it is my considered view that the Applicants have explained the reasons for the delay in filing the instant application which I find plausible. I opine that the Applicants have demonstrated sufficient cause to warrant the revival of this suit. This Court further stands guided by the principles enshrined in the Constitution on administration of justice, specifically the Overriding Objective. Further, from the averments in the replying affidavit, it is my considered view that no harm will be suffered if the suit is revived and the Defendants allowed to prosecute their defense so that the Court can determine the suit on merit.

25. In the foregoing, I find the instant Notice of Motion application merited and will allow it in the following terms:

- a) **This suit be and is hereby revived.**
- b) **The deceased Plaintiff is hereby substituted with his legal representatives, namely Jane Wanjiru Kuria and Anne Wambui Kuria.**
- c) **That the Applicants be and are hereby granted leave of fourteen (14) days to amend the plaint and/or pleadings filed herein on behalf of the deceased's Plaintiff accordingly.**
- d) **Costs will be in the cause.**

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
18TH DAY OF MARCH, 2026**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Mutugi for Respondent

R.K Langat for Applicant

Court Assistant: Joan

ELC CASE NO. 667 OF 2009

Ruling