

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT BUSIA

ELC NO 188 OF 2017

MARY NAFULA WANYAMA (suing as the legal representative of the Estate of **PATRICK ASEMBO WANYAMA**
PLAINTIFF/APPLICANT

= VERUS =

VINCENT JUMA MUKUDI 1ST

DEFENDANT/RESPONDENT

SYSLVESTER TABU MUKUDI 2ND

DEFENDANT

THE ESTATE OF ADRIANO ASEMBO 3RD

DEFENDANT

R U L I N G

1. **PATRICK ASEMBO WANYAMA** (herein the deceased) was the Plaintiff in this case filed against **VINCENT JUMA MUKUDI, SYLVESTER TAMBU MUKUDI** and the Estate of **ADRIANO ASEMBO MUKUDI** (the 1st, 2nd and 3rd Defendants respectively). He sought various orders against the Defendants with regard to the land parcel **NO**

SAMIA/BUJWANGA/1957 (the suit land). The plaint was dated 20th November 2017 and was filed on 4th December 2017. The record does not show if the Defendants filed any defence although there is an affidavit of service. But that is not relevant for purposes of this ruling.

2. What is relevant is that the Plaintiff died on 25th March 2021 and had not been substituted by 24th March 2022. Therefore, in accordance with the provisions of **Order 24 Rule 3(2)** of the **Civil Procedure Rules** the suit abated.
3. It was not until 14th March 2025 that **MARY NAFULA WANYAMA** (the Applicant), having obtained the requisite Letters of Administration Ad Litem, first moved to this Court vide her Notice of Motion of even date, seeking orders to be allowed to substitute the deceased and for this suit to be transferred to **PORT VICTORIA MAGISTRATE'S COURT**. That Motion was however withdrawn on 1st April 2025. A second Motion by the Applicant dated 30th April 2025 was also struck out on 6th May 2025.
4. The Applicant has now approached this Court vide her Notice of Motion dated 14th May 2025 and premised on the

provisions of **Order 24 Rule 3, Order 24 Rule 7** of the **Civil Procedure Rules** and **Sections 1A, 1B** and **3A** of the **Civil Procedure Act**. She seeks the following orders:

- 1) Spent**
- 2) Spent**
- 3) That a temporary injunction do issue restraining the Defendants/Respondents, their agents, servants or any other person acting under their instruction from acting, transferring, leasing, charging or in any other way dealing with the land parcel no SAMIA/BUJWANGA/1957 pending the hearing and determination of this suit.**
- 4) That this Honourable Court be pleased to substitute the deceased Plaintiff with the Applicant the duly appointed legal representative of the Estate of the deceased.**
- 5) That this Honourable Court be pleased to transfer this suit to Port Victoria Law Courts.**

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

5. The Motion is based on the grounds set out therein and supported by the Applicant's affidavit.
6. The gravamen of the Motion is that the deceased instituted this suit in 2017 but passed away on 25th March 2021 before it was determined and thereby abated due to the lapse of time within which substitution should have been done.
7. The Applicant has since obtained a grant of Letters of Administration in respect of the Estate of the deceased following a delay which was due to un-avoidable circumstances including the fact that the Applicant did not know the number of this case and this file had gone missing. She wishes to prosecute this case to its logical conclusion and the same should be transferred to Port Victoria Magistrates Court which has both territorial and pecuniary jurisdiction to determine this suit.
8. The following documents are annexed to the Motion:
 - 1) Copy of the death certificate for the deceased.

- 2) Copy of confirmed Grant issued in respect of the deceased's Estate on 11th October 2023 in **NAIROBI HIGH COURT SUCCESSION CAUSE NO E3534 of 2022** (not Grant Ad Litem as per the supporting affidavit).
 - 3) Letter dated 31st October 2024 and addressed to the Deputy Registrar by the Applicant's counsel requesting that this file be traced.
 - 4) Response by the Deputy Registrar dated 21st November 2024 confirming that the file **NO ELC 188 of 2019** is available in the registry. I Notice that the response refers to file **NO ELC 188 of 2019** (not **188 of 2017** which is this file).
9. The Motion is opposed and the 1st Defendant has filed a replying affidavit dated 3rd October 2025 in which he has averred, inter alia, that the deceased died on 25th March 2021 and this Motion has been filed 4 years later. This suit abated on 24th March 2022 in accordance with the provisions of **Order 24 Rule 3(2)** of the **Civil Procedure Rules** and the reasons given by the Applicant for the delay of 4 years is

a mere afterthought as the deceased had an advocate who could have advised him.

10. The Motion has been canvassed by way of written submissions. The same have been filed both by **MR SALA** instructed by the firm of **SALA & MUDANY ADVOCATES** for the Applicant and by **MR JUMA** instructed by the firm of **J. V. JUMA & COMPANY ADVOCATES** for the Defendants.
11. I have considered the Motion, the rival affidavits and annexures thereto as well as the submissions by counsel.
12. I shall consider prayers **NO 4** and **5** first because they have a bearing on the other prayers and if those prayers collapses, then the other prayers will also collapse.
13. **Order 24 Rules 3 and 7(2)** of the **Civil Procedure Rules** provide 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.”

7(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.”

14. It is not in dispute that the deceased died on 25th March 2021 as per the annexed copy of the death certificate. Therefore, in accordance with the provisions of **Order 24 Rule 3(2)** of the **Civil Procedure Rules**, this suit abated by operation of the law on 24th March 2022 which was within one year when the Applicant should have applied to be made the legal representative of the deceased and to substitute him in order to be clothed with the locus to revive this suit and prosecute it. It has taken her upto 4th May 2025 some 4 years later to file this Motion, a delay which is quite inordinate as stated by the Defendants.
15. The law, under **Order 24 Rule 7(2)** grants the Applicant a window to revive an abated suit but only if she can demonstrate **“sufficient cause”** for not filing this Motion within one year from the date of the demise of the Plaintiff. I have checked the proceedings herein and noted that even after the demise of the Plaintiff, this case continued being

mentioned. Although the abatement of the suit is by operation of the law and as a matter of course, it is good practice for the record to reflect the abatement and for the parties to be notified. In the case of **REBECCA MIJIDE MUNGOLE & ANOTHER -V- KENYA POWER & LIGHTING COMPANY LTD & 2 OTHERS C.A. CIVIL APPEAL NO 283 of 2015 [2017 KECA 544 KLR]**, the Court of Appeal stated as follows while discussing the provisions of **Order 24 Rule 3 and 7** of the **Civil Procedure Rules**:

“The sequence of the application under this procedure of what should happen in case of the death of a Plaintiff and the cause of action survives or continues, is plain. Speaking generally, by operation of the law, a suit will automatically abate where a sole Plaintiff or sole surviving Plaintiff dies and the cause of action survives or continues if no application is made within one year following his death. According to rule 3(2) the Defendant is only required to apply for an award of costs which he may have incurred

in defending the suit, to be recovered from the estate of the deceased Plaintiff. But as was observed by this Court in Said Sweilam (supra) the fact of abatement has to be brought to the Notice of the Court, proved and accordingly recorded in order for the Defendant to apply for costs. It means that even though the legal effect of abatement may have already taken place, for convenience, an order of the Court is necessary for a final and effectual disposal of the suit.”

16. The same Court then proceeded to consider what amounts to “**sufficient cause**” that can support a prayer for revival of an abated suit. It said:

“After time to apply has been enlarged and the legal representative has been joined, the focus and burden shifts to him to show cause why the abated suit should be revived. A prayer for the revival of the suit cannot be allowed as a matter 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.”

17. The term sufficient cause was also defined in the case of **ATTORNEY GENERAL -V- LAW SOCIETY OF KENYA & ANOTHER 2017 eKLR** as follows:

“Sufficient cause or good cause in law means; ... the burden placed by 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 doubts in a judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.”

The Applicant has produced a copy of the Confirmed Grant issued to her on 11th October 2023 in respect of the Estate of the deceased. It confirms that she is the Administrator to that Estate in which the suit land which is the only property of the Estate has already been distributed, to among others, the Applicant. I would have thought that the Confirmed

Grant should bring the issue to an end. But that is not my mandate in this ruling. All I can say with reference to it is that the Applicant has demonstrated that she should be joined in this suit to substitute the deceased. That prayer is allowed.

18. With regard to the revival of the abated suit, the Applicant has not given any explanation as to why she did not apply for the Grant of Letter of Administration until she moved the Probate Court in the Probate Court **NO E3534** of **2022** one year after the demise of the deceased in 2021. There is evidence from communication with the Deputy Registrar that indeed at some point between 31st October 2024 and 21st November 2024, the file was missing but it was eventually traced and the Applicant notified vide email dated 21st November 2024. But again the Applicant took no action to revive this suit until she filed the Motion dated 14th March 2025 which was later withdrawn and later, a Motion dated 30th April 2025 which was struck out. So between November 2024 when the Applicant was informed about the availability of this file in the registry and 14th March 2025 when she first

approached this Court with the Motion, a period of 4 months, no explanation, reasonable or otherwise, has been put forward by the Applicant as to why she did not seek the revival of this suit having already obtained the Grant in respect of the Estate of the deceased. Then there is also the delay between 21st March 2021 when the deceased passed away and 2022 when she moved to the Probate Court, a delay of a whole year which she has not accounted for by providing sufficient cause. Indeed no reason at all has been provided for the failure to move the Court within one year of the demise of the deceased as is provided in law. There is no reason, therefore, why this Court should exercise its discretion in the Applicant's favour. And in the absence of any reason, this Court has no basis upon which to interrogate whether there is any **“rational, plausible, logical, convincing, reasonable and truthful”** justification for granting the Applicant the orders sought - **ATTORNEY GENERAL -V- LAW SOCIETY OF KENYA** (supra). Rather, this appears to be a case of **“dilatory tactics, want of bone fides, deliberate inaction or**

negligence on the part of the Applicant” - REBECCA MIJIDE MUNGOLE & ANOTHER -V- KENYA POWER & LIGHTING COMPANY LTD (supra). Such conduct will not endear the Applicant to the Court to warrant the grant of the order of the revival of this suit. The Motion must therefore be dismissed.

19. With regard to costs, they follow the event.
20. The up-shot of all the above is that having considered the Notice of Motion dated 14th May 2025, this Court makes the following disposal orders:

- 1) The Motion is dismissed.**
- 2) Costs to the Defendants.**

BOAZ N. OLAO

JUDGE

9TH APRIL 2026

Ruling dated, signed and delivered on this 9th day of April 2026 by way of electronic mail with Notice to the parties.

BOAZ N. OLAO

JUDGE

9TH APRIL 2026

Explanatory notes:

This ruling was due for delivery on 3rd March 2026. However, following my transfer to Iten Court, I had to prioritize my part heard cases and deliver judgments and rulings. That has contributed to the delay in delivering this ruling. The same is regretted.

BOAZ N. OLAO

JUDGE

9TH APRIL 2026