



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. E009 OF 2022

**JEREMY KILEMI
MBOROKI.....PLAINTIFF**

=VERSUS=

**JOHN KIRIAMBU M'LAIKURU.....1ST
DEFENDANT**

**DESMOND KINYUA STEPHEN (*Sued as the
Legal Representative of SIMEON M'MWONGO*)...2ND
DEFENDANT**

**THE LAND REGISTRAR,
EAST AND WEST TIGANIA.....3RD
DEFENDANT**

**THE HON ATTORNEY GENERAL.....4TH
DEFENDANT**

RULING

Background

1. The plaintiff, **Jeremy Kilemi Mboroki**, initiated this suit on 7/6/2022 through a plaint dated 3/6/2022. He alleged that in 1996, the 1st defendant sold to him a piece of land measuring 0.70 acres [0.26 hectares] and he took possession of the said land upon purchase. He subsequently discovered

in 2021 that the 2nd defendant, in collusion with the 3rd defendant, had illegally and fraudulently taken a portion measuring 0.40 out of the purchased land, leaving him with 0.18 hectares. Among other reliefs, he sought an order rectifying the parcel register relating to **Nyambene/Uringu/1/17** to capture what he describes as the correct acreage of the land that he purchased and occupies.

2. On 26/4/2024, the Court (**Yano, J**) was informed that the 2nd defendant had died. Consequently, the court listed the matter for mention on 1/10/2024 to confirm substitution of the 2nd defendant. By 1/10/2024, no application for substitution had been filed. The court [**Yano J**] granted the plaintiff the last chance to decide how to proceed in the following verbatim terms:

“I will grant the plaintiff the last chance to decide on how to proceed with the case, failure to which the same will stand dismissed. Mention on 6/11/2024.”

3. On 6/11/2024, counsel for the plaintiff informed the court that they were waiting for some documents to facilitate citation in a succession cause with a view to obtaining a grant relating to the estate of the deceased defendant. Consequently, the court [Yano J] made the following order:

“Further mention on 21/1/2025 to confirm substitution of the 2nd defendant.”

4. The same explanation was conveyed to the new judge [**Eboso J**] on 21/1/2025 by counsel for the plaintiff. The court

listed the matter for mention on 23/4/2025. The matter was listed erroneously before **Oguttu Mboya J** on 23/3/2025. The learned Judge directed the matter to be listed before Eboso J. The matter was subsequently listed before Eboso J on 29/4/2025. On that day, counsel for the plaintiff informed the court that they had taken out and served a citation against beneficiaries of the 2nd defendant's estate and they were waiting for disposal of the citation by the succession court. Counsel asked for a further mention and the court listed the matter for further mention on 28/7/2025. On 28/7/2025, counsel for the plaintiff asked for more time and the court listed the matter for mention on 7/10/2025. On 7/10/2025, the court directed a further mention on 14/10/2025.

5. Subsequent to that, the estate of the late **Simeon M'Mwongo** [2nd defendant] brought an application dated 13/10/2025 seeking an order substituting the deceased 2nd defendant by his son, **Desmond Kinyua Stephen**. When the matter came up for directions on 14/10/2025, parties to the suit urged the court to allow the application. Consequently, the court allowed the estate's application in the following verbatim terms:

“1. In the absence of any opposition, the plea for substitution is allowed

2. The plaintiff shall be at liberty to bring an application for revival of the claim which appears to have abated in May 2025.”

Application for Revival

6. What followed was an application dated 23/10/2025 by the plaintiff, seeking: (i) an order reviving the suit against the 2nd defendant; and (ii) in the alternative, an order granting the plaintiff the liberty to proceed with the suit against the 3rd and 4th defendants. Only the 2nd defendant opposed the application. The said application is what falls for determination in this ruling.

Analysis and Determination

7. The application dated 23/10/2025 was premised on the grounds set out in the motion and in the plaintiff's supporting affidavit dated 23/10/2025 and his further affidavit dated 18/12/2025. It was canvassed through written submissions dated 18/12/2025, filed by **M/s Ojwang Sombe & Co Advocates**. The case of the plaintiff/applicant is that the claim against the late Simeon M'Mwongo abated upon expiry of 12 months from the date of his death. He adds that this was occasioned by: (i) late knowledge of the 2nd defendant's demise; and (ii) delay in obtaining a grant relating to the estate of the deceased defendant. He contends that upon learning about the demise of the 2nd defendant, he took out a citation against beneficiaries of the estate, adding that the estate subsequently initiated a miscellaneous succession cause [**Tigania SPMC Miscellaneous Succession No 17 of 2025**] without informing him and obtained a limited grant on 11/7/2025.
8. The estate [the 2nd defendant] opposed the application through a replying affidavit sworn by **Desmond Kinyua Stephen** on 17/11/2025 and written submissions dated 14/1/2026. The case of the estate is that the late Simeon

M'Mwongo died on 31/7/2024. The estate further contends that this suit was finalized on 22/11/2023 during the lifetime of the deceased, adding that the plaintiff's suit was dismissed with costs for non-attendance. It is the case of the estate that contrary to the plaintiff's allegation that the suit against the deceased abated, the suit was dismissed for non-attendance on 22/11/2023.

9. The estate further contends that there was no privity of contract between the deceased and the plaintiff, adding that the 1st defendant who is alleged to have been privy to the alleged contract is deceased. The estate stands that the present application is motivated by the applicant's greed, adding that the applicant seeks to have land that he never purchased.
10. I have considered the application; the response to the application; and the parties' respective submissions. I have also considered the legal frameworks and the jurisprudence relevant to the key issue that falls for determination in the application. The single issue to be determined in this ruling is whether the application meets the criteria upon which our trial courts exercise the discretionary jurisdiction to grant orders of revival of an abated claim.
11. The general jurisdiction to revive an abated suit or claim is donated by **Order 24 rule 7** of the **Civil Procedure Rules** which provides as follows:

"1. Where a suit abates or is dismissed under this order no fresh suit shall be brought on the same cause of action.

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.”

- 12.** The Court of Appeal in ***Joseph Gachuhi Muthanji v Mary Wambui Njuguna [2014] eKLR*** discussed the import of **Order 24 rule 7(2)** of the **Civil Procedure Rules**. The prevailing principle is that, a party inviting the court to exercise discretionary jurisdiction under **Order 24 rule 7(2)** of the **Civil Procedure Rules** is required to demonstrate that there was sufficient cause which prevented him from initiating substitution proceedings to procure the necessary orders within the prescribed period of 12 months.
- 13.** The context of the present application is that the estate of the deceased applied for substitution after the suit had abated. Secondly, the estate did not pray for an order reviving the abated claim. Consequently, whereas the plea for substitution was granted on 14/10/2025, the abated claim against the deceased 2nd defendant was not revived because there was no prayer by the estate for revival of the claim.

- 14.** The applicant in the present application [the plaintiff] has explained that he was not aware that the 2nd defendant had died. Secondly, he has explained that further delay was occasioned by the need to procure documents that would enable him take out a citation in a succession court. He has added that upon initiating the process of taking out a citation, the estate initiated succession proceedings in the Senior Principal Magistrate Court at Tigania and failed to inform him. The above explanation has not been controverted by the estate.
- 15.** The court has considered the gist of the estate's grounds of opposition. The estate contends that the plea for revival is misplaced because this suit was dismissed during the lifetime of the deceased and did not abate as alleged by the plaintiff. The court has gone through the record. It is true that this court [Yano J] dismissed the plaintiff's suit on 22/11/2023 for non-attendance. The court record shows that on 23/11/2023, the plaintiff filed an application dated 23/11/2023 under a certificate of urgency, seeking orders reinstating the suit. The court [Yano J] issued directions on the application and directed that the application was to be heard interpartes on 13/12/2023 in ELC Court 1 [Yano J]. The court [Yano J] considered the application on 13/12/2023 and allowed it. The tenor and import of the order of 13/12/2023 is that it set aside the dismissal order of 22/11/2023 and reinstated the plaintiff's suit. This fact appears to have escaped the attention of the estate of the 2nd defendant. For avoidance of doubt, the court issued the following verbatim order on 13/12/2023:

“Since the application dated 23/11/2023 is not opposed, the same is allowed in terms of prayers (b) and (c) thereof.

The order made on 22/11/2023 dismissing the suit is set aside and the same is reinstated.”

- 16.** The other aspects of the estate’s grounds of opposition focus on the merits of the plaintiff’s claim against the deceased. At this point, the court is not focusing on whether the plaintiff’s claim has merits on the balance of probabilities. The focus of the court is on whether the criteria for revival of a suit has been met.
- 17.** Taking into account the uncontroverted explanation that has been tendered by the plaintiff and the response by the 2nd defendant, the court is satisfied that the plaintiff has demonstrated a sufficient cause that warrants exercise of the discretionary jurisdiction to revive the abated claim against the 2nd defendant. That is the finding of the court.
- 18.** Consequently, the application dated 23/10/2025 is found merited and is allowed in terms of prayer 1. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED AT MERU THIS 13TH DAY OF APRIL, 2026.

B M EBOSO [MR]

ELC JUDGE

In the Presence of:

Ms. Chishenga for the Plaintiff/Applicant

Mr. Desmond Kinyua - 2nd Defendant/Respondent

Ms. E. Wairimu for the 3rd and 4th Defendant/Respondent

Mr. Tupet - Court Assistant

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