



Olilo v Principal Magistrates Court at Oyugis Law Courts & 4 others (Environment and Land Petition E001 of 2023) [2026] KEELC 1955 (KLR) (2 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1955 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT AND LAND PETITION E001 OF 2023
FO NYAGAKA, J
MARCH 2, 2026**

BETWEEN

WILSON DINDA OILO APPLICANT

AND

**PRINCIPAL MAGISTRATES COURT AT OYUGIS LAW
COURTS 1ST RESPONDENT**

**THE DISTRICT LAND REGISTRAR RACHUONYO DISTRICT 2ND
RESPONDENT**

THE ATTORNEY GENERAL 3RD RESPONDENT

WILLIAM NGODHE AKECHI 4TH RESPONDENT

AND

DALMAS AKECH NGIELA (DECEASED) LEGAL REPRESENTATIVE

(On reinstatement of suit against a deceased person after abatement of suit)

RULING

1. By a Notice of Motion dated 30th April 2025, the Petitioner moved this court under Court (sic) 24 rule 4(1) of the Civil Procedure Rules, Sections 3, 3A and 63e of the *Civil Procedure Act*, and what he termed as “And all enabling provisions of the Law.” He sought the following orders: -
 1. ...Spent.
 2. That one William Ngodhe Akech named herein as Legal Representative/Respondent in this Application be made a party in this case and be substituted for Dalmás Akech Ngiela (deceased)



who was formerly the 4th Defendant and who was the late father of William Ngodhe Akech named herein as legal Representative/Respondent.

3. That the costs of this application be in the cause.
2. The application was based on a number of grounds and supported by the Affidavit of Wilson Dinda Olilo sworn on the same date as the application. The grounds of the application were that 4th Defendant, one Dalmas Akech Ngodhe, died before the instant Petition was heard and determined. One William Ngodhe Akech was now the legal Representative of the estate of Dalmas Akech Ngiela (deceased). He became the legal representative vide Certificate of Confirmation of Grant dated 11/10/2023 in Oyugis SPMC in Succession Cause No. 134 of 2023. He annexed and marked "WDO the Supporting Affidavit of Wilson Dinda Olilo. He added that the cause of action survives or continues and he requested the to substitute the said William Ngodhe Akech for the deceased father and continue with the hearing of the case for the good ends of justice (sic). The Petitioner was desirous to have this Petition heard and determined between him and the legal representative of the deceased. There was no prejudice occasioned if the substitution was made and the case proceeded to hearing to its logical conclusion. The Petition had high chances of success. He prayed that the costs be in the cause.
3. It is surprising that the applicant referred to and attached to the grounds in support of the application a Replying Affidavit sworn by one William Ngodhe, the son of the 4th defendant who was then a Respondent in an earlier application on 17th November 2022. This was contrary to the Rules of drafting since annexures do not constitute part of the contents of grounds in support of applications.
4. Be that as it may, the application was supported by the Affidavit sworn by the Petitioner, as stated above, on 30th April 2025. Its contents were a replica of the grounds in support of the application save that to them he added the following depositions. The matter before the Court is for the hearing and determination of the Application dated 31/5/2022 in then Migori E.L.C. Court Petition No.7 of 2017 seeking for Review of the Judgment made on 31/1/2018 and also Review of another one made on 7/2/2014 in Kisii HC C.A. No.71 of 2008 (E.L.C).
5. It was his deposition that he learned of the death of the 4th Respondent through the Affidavit sworn on 17/11/2022 by the deceased's son, William Ngodhe Akech. He annexed the copy of the Affidavit and marked "WDO 1". After that he filed a Citation cause against the said William Ngodhe Akech to accept or refuse letters of Administration Intestate in respect of the estate of his deceased father. It was the Oyugis Citation Cause No. E021 of 2025. It was due for hearing on 06th May 2025.
6. Further, William Ngodhe Akech filed a response by way of an Application dated 9/4/2025. In the application he annexed the confirmed Grant. He annexed a copy of Grant and marked it "WDO 2". The application came up for inter-partes hearing after service was effected. But the Respondents did not file a reply to it. Nevertheless, this court has the legal obligation to decide the application on its merits.

Issue, Analysis And Determination

7. For that reason, this Court is of the view that only two issues lie for determination in this matter. The first one is whether the application is competent before the Court, and the second one is who to bear the cost of the application.
8. This Court starts the determination of the issues identified by analyzing the first one. The issue is whether the application before the Court is competent or not. This issue is founded on the fact that the application was filed three years after the applicant allegedly learnt of the of the death of the 4th Respondent.



9. The law on substitution of parties one or die in the course of proceedings is governed by Order 24 Rule 1, 2 and 3 of the Civil Procedure Rules. Order 24 Rule 2 provides that;

“Where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.”

10. Further, Order 24 Rule 4(1) provides that;

“Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant 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 defendant to be made a party and shall proceed with the suit.”

11. Then subrule 3 provides that,

“Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.”

12. Lastly, Order 24 Rule 7 provides for revival of suits where a Plaintiff has died and the same abates after a year lapses before substitution. These provisions (above) are clear that where a party dies, particularly, a defendant and no substitution of the deceased is made within 12 months of his death the suit against him or her abates. It means the suit ceases to exist against the deceased.

13. In the instant matter, the 4th Respondent is said to have died before the 17th November 2022 when the applicant learnt of this through an affidavit that was by his son, it is clear that from that time up to when the son exhibited the confirmed Grant dated 11th October 2023, he took no steps to apply for the revival of the cause of action. Thus, even assuming that the 4th Defendant died only a few days before the 17th of November 2022 the applicant had up to one year later or thereafter to have the legal representative substituted. In any event, the applicant has not demonstrated the specific date the 4th Respondent died as to determine when the suit abated.

14. The instant application is thus incompetent as it was brought before the court was moved for the revival of the abated against the 4th Respondent. It is this Court’s view that the instant application is intended to cause substitution of a non-existent person in so far as the abatement took place.

15. Regarding costs, the applicant is the one who has moved this court for the orders sought. They have not been granted. He lost the application. Thus, under Section 27 of the *Civil Procedure Act* since costs follow the event, the applicant is the one who shall bear them.

16. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM
THIS 2ND DAY OF MARCH 2026.**

HON. DR. IUR FRED NYAGAKA

JUDGE

In the presence of:



Mr. Okenye Advocate for the Petitioner.

No appearance for the Respondents.

