

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
BUNGOMA
ELC CASE NO. 63 OF 2006

FATUMA MOHAMED BEDEL (Suing as the Legal Representative and Administratrix of the Estate of HADIJA SHIRE)PLAINTIFF

VERSUS

KHADIJA OMAR1ST

DEFENDANT

ZAINAB UMAR ABDI 2ND

DEFENDANT

PHYSICAL PLANNER, BUNGOMA COUNTY..... 3RD

DEFENDANT

COUNTY GOVERNMENT OF BUNGOMA..... 4TH

DEFENDANT

NATIONAL LAND COMMISSION.....5TH

DEFENDANT

HON. ATTORNEY GENERAL.....6TH

DEFENDANT

ELIZABETH WAFULA ALIAS

ELITHABETH WAFULA..... 7TH

DEFENDANT

RULING

Through the application dated 21/1/2026, the Plaintiff sought to have this court vary or set aside the orders of 5/6/2025, which directed the Plaintiff to take steps to prosecute the case within 8 months of the date of that ruling. The Plaintiff sought to have the time within which she is to prosecute the case extended and for the fixing of a hearing date for the suit on a priority basis. The application was made on the grounds that when the court delivered its ruling on 5/6/2025, it awarded the 1st and 2nd Defendants throw away costs of Kshs. 10,000/= and ordered the Plaintiff to take steps to prosecute the case within 8 months failing which it would stand dismissed for want of prosecution.

The Plaintiff averred that she complied with the directions of the court but in the intervening period, the former Plaintiff, Hadija Shire died on 18/6/2025. An application for limited letters of administration for purposes of continuing the suit was made, which was allowed on 11/12/2025. The Plaintiff explained that in light of the foregoing, it was not possible for the suit to be prosecuted within the 8 months decreed by the court.

The Plaintiff swore the supporting affidavit and explained that after Hadija Shire died, she applied for letters of administration and that the suit could not be heard within the time directed by the court owing to the death of the Plaintiff.

The 1st and 2nd Defendants opposed the application based on the grounds dated 10/2/2026. They urged that the application was

frivolous, vexatious, scandalous and an abuse of the due process of court. Further, that the orders, which the Plaintiff seeks, could not be granted because the suit stood dismissed for want of prosecution in line with the ruling of 5/6/2025. They added that litigation must end and that the suit had been in court for the last 20 years while reiterating that it stood dismissed for want of prosecution.

The application was canvassed through written submissions. The Plaintiff invited the court to exercise its discretion in her favour and set aside the order for dismissal of the suit. She submitted that there had not been inordinate delay in prosecuting the suit and that the initial Plaintiff died on 18/6/2025 before the orders of the court could be complied with. In the submissions, the Plaintiff gave a chronology of the events that took place after the court gave directions on 5/6/2025. The Plaintiff urged that dismissing the application would prejudice the estate of the initial Plaintiff and the beneficiaries because they would have been driven away from the seat of justice for reasons beyond their control. She urged that the Defendants would not be prejudiced in any way because they can still participate in the proceedings having filed their defence and other documents.

The 1st and 2nd Defendants submitted that the orders sought could not be granted because the suit stood dismissed in line with the ruling of 5/6/2025. The Defendants blamed the Plaintiff for delaying the hearing of the case for over 20 years and cited

Article 159 (2) (b) of the Constitution which stipulates that justice should not be delayed.

The issue for determination is whether this court should vary the orders made on 5/6/2025 to allow the Plaintiff to prosecute her case. It is not in dispute that after the court gave the timeline on 5/6/2025, the initial Plaintiff died and was substituted in December, 2025. Based on this, the court is inclined to extend time as the reasons given by the Plaintiff for her failure to comply with the court directives is plausible. The court grants prayers (a) & (b) of the application dated 21/2/2026 on condition that the Plaintiff prosecutes her case within 6 months of the date of this ruling.

Delivered virtually at Bungoma this 30th day of April 2026.

K. BOR
JUDGE

In the presence of: -

Mr. D. Okaka holding brief for Mr. A. Anwar for the Plaintiff

No appearance for the Defendants