



**Waweru & another v Ndegwa & 2 others (Environment and Land  
Case 85 of 2023) [2026] KEELC 2432 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2432 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT AND LAND CASE 85 OF 2023**

**JM KAMAU, J**

**APRIL 23, 2026**

**BETWEEN**

**CYRUS NDEGWA WAWERU & ANOTHER ..... PLAINTIFF**

**AND**

**GICHUKI NDEGWA & 2 OTHERS & 2 OTHERS ..... DEFENDANT**

**RULING**

1. In the Motion dated 13/11/2025 there are 2 prayers: -
  - a. For the abated suit to be revised following the death of the 1<sup>st</sup> Plaintiff, James Waweru Ndegwa on 23/12/2018.
  - b. That Cyrus Ndegwa Waweru being the duly appointed legal representative of the Deceased's estate by virtue of a limited Grant of letters of Administration ad litem be substituted as the 1<sup>st</sup> Plaintiff in this case.
  - c. Upon substitution the suit do proceed to hearing and determination on its merits.
  - d. Costs of the Application be in the cause.
2. In the Supporting Affidavit of the said Cyprus Ndegwa Waweru sworn on even date, the deponent says that at the time of the Deceased's death on 23/12/2018, this suit was pending hearing and determination.
3. The cause of action in respect of ownership, occupation and use of the parcels of land known as Gituamba/Muhotetu Block 2/647 and 397 survives the deceased and should rightfully be continued by his Estate.
4. He further depones that the delay in substitution was not deliberate but occasioned by the failure of the Advocates then acting for the Deceased to apply for substitution. He further says that on



the 4/11/2022 this Court directed him to file the necessary Application within 30 days in order to regularize the record.

5. Finally, he says that it is in the interest of justice that this Court revives the suit and allows him to be substituted in place of the deceased, 1<sup>st</sup> Plaintiff, so that the suit can proceed and be conducted on merit and further that no prejudice will be suffered by the Respondent should the prayers sought be granted.
6. In the Affidavit in response to the Application sworn on 20/1/2026 by Mahenia Ndegwa, the 2<sup>nd</sup> Defendant depones that the Application is misconceived, frivolous, bad in law, an abuse of the Court process and is brought after inordinate, unexplainable and inexcusable delay. No Application for the extension of time was even sought or obtained 6 years after the 1<sup>st</sup> Plaintiff's death. The suit for the 1<sup>st</sup> Plaintiff abated on 23/12/2019 and Grant ad litem was issued before the suit abated on 4/6/2019. Despite the Court's clear and repeated directions and extensions of time to file the Application for substitution, the 1<sup>st</sup> Plaintiff's legal representatives has always failed, neglected and/or refused to file the said Application for substitution and that therefore the suit abated on 23/12/2019.
7. An earlier Application was filed on 21/1/2020 but after the suit had already abated and the Applicant was advised to regularize the situation within 21 days until the Court was tired and ordered that the suit proceeds only with the 2<sup>nd</sup> Plaintiff and without any representation for the 1<sup>st</sup> Plaintiff and subsequently the then Advocate for the Applicant sought for and obtained instructions to act for the said 1<sup>st</sup> Plaintiff. The Respondent finally depones to the fact that contrary to the 1<sup>st</sup> Plaintiff's legal representative's assertion that the Respondents would suffer no prejudice if the suit was revised, it would be unjust and contrary to the principles of equity and fairness. This prolonged delay has caused the Respondent unwarranted anxiety and prejudice, a position I agree with and which I take with utmost seriousness.
8. Having heard both parties through their Affidavits in support of their respective positions, I find that the Applicant has never been serious in proceeding with this matter even after the Court gave him so many chances. He has now sacked 2 Advocates and blames his delay in filing this Application to his first Advocate. No explanation has been given as to why he did not co-operate with the latter firm of Advocates, Kebuka Wachira & Co. advocates to the extent that the latter applied to cease acting for him.
9. I will however give the Applicant the last chance and allow his prayers Nos. 1 and 2 in the Application dated 13/11/2025 on condition that this suit should be heard within the next 60 days without fail and that the Applicant will do everything legal that it takes to ensure that the timelines given are kept.
10. Secondly, he will not come back on the hearing of the case to apply for an adjournment on the ground that he either wants to look for an Advocate or that he has just hired an Advocate who intends to get the file from the previous Advocates in order to prepare for hearing. None of these shall be entertained by this Court. The Court has reluctantly applied its discretion to allow this Application bearing in mind that the Deceased must be innocent and may not be aware of the indolence of the Applicant.

**RULING READ AND DELIVERED AT NYANDARUA THIS 23RD DAY OF APRIL 2026.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant: Samson.

Plaintiff: N/A.

Defendant's Counsel: Ms. Njeri Njagua.

