



Sunkuiya v Osoi (Administrator of the Estate of the Late Daniel Tarayia - Osoi (Deceased)) & another (Environment and Land Case 5 of 2018) [2025] KEELC 5512 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5512 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 5 OF 2018**

MD MWANGI, J

JULY 24, 2025

BETWEEN

KALOLE OLE SUNKUIYIA PETITIONER

AND

AGNES NGALIAI OSOI (ADMINISTRATOR OF THE ESTATE OF THE LATE DANIEL TARAYIA - OSOI (DECEASED)) 1ST RESPONDENT

THE PRINCIPAL MAGISTRATE - KAJIADO LAW COURTS 2ND RESPONDENT

(In respect of the application dated 6th September 2024 seeking to substitute the 1st Respondent who is said to be deceased, stay of the decree pending appeal and leave to appeal out of time)

RULING

Background.

1. Judgment in this matter was delivered on 24th April 2024 by my predecessor, Gicheru J. In his judgment, the learned Judge found in favour of the Petitioner declaring that the Kajiado Land Disputes Tribunal award dated 11th August 2011 was null and void in view of the fact that the same Tribunal had made an earlier decision on 20th December 2007 which had been adopted as a judgment of the court and a decree dated 15th April 2010 issued. He further noted that that earlier decree was never set aside by either an appellate court or a higher tribunal. Therefore that particular decree remains valid.
2. The learned Judge further declared that the suit as against the 1st Respondent had not abated. This finding was based on the fact that no evidence had been presented before the court confirming the death and time of death of the 1st Respondent. Secondly, it was the court's view that the suit before it was 'a suit in rem not in personam; it survived the deceased since it involves land'.



3. From the evidence attached to the supporting affidavit of the Applicant, filed in support of the application under consideration, it is now evident that the 1st Respondent passed on way back on 22nd July 2020, during the pendency of this suit. However, as the court noted in its judgment, the evidence was not presented before it; hence its finding that the suit had not abated.
4. The Applicant seeks to substitute the deceased 1st Respondent in her capacity of a personal representative of the estate.
5. The application before the court presents a rather interesting scenario. Going by the pronouncement of the court that declared that the suit against the 1st Respondent had not abated, then the Applicant can substitute the 1st Respondent. However, the Applicant has now presented cogent evidence confirming that the 1st Respondent indeed died on 22nd July 2020.
6. Rule 4(3) of Order 24 of the *Civil Procedure Rules* requires an application to substitute a deceased Defendant, where the cause of action survives or continues, within one year from the date of death, otherwise the suit shall abate as against the deceased Defendant.
7. Abatement of a suit means that the suit is no more; it ceases to exist in the eyes of the law.
8. The implication of the above finding is that nothing can be done in an abated suit. The suit must be revived first in terms of provisions Order 24 rule 7(2) of the *Civil Procedure Rules*. As the Court of Appeal in the case of *Keith & 2 others (sued in their capacity as advocates practicing under the firm name of Daly & Figgis Advocates v Alibhai)* (Civil Appeal No. 359 of 2018) (2024) KECA 1196 (KLR), held,

“The abatement takes places on its own force by passage of time, a legal consequence which flows from the omission to take the necessary steps within one year to implead the legal representative of the deceased plaintiff. There have been arguments, as to whether or not a formal order is necessary to confirm the fact of abatement. See *M’Mboroki Marangacha v Land Adjudication Officer, Nyambene & 2 others*, Meru HCC Application No. 45 of 1997 where the High Court held that an order to record the abatement of a suit was not necessary. See a similar holding in *KFC Union v Charles Murgor (deceased)* NBI HCCC No. 1671 of 1994”.
9. The Court of Appeal in the said judgment further held that substitution can only be done in a suit that has been revived under rule 7(2). Revival precedes substitution.
10. The Applicant in this case having failed to seek to revive the suit first cannot therefore proceed to seek to substitute the deceased. Her application must fail. It is hereby struck out with costs to the Petitioner.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24TH DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Chacha for the Applicant

Mr. Ochieng for the 1st Respondent

N/A for the 2nd Respondent

Court Assistant: Edwin

