Mbugua v Mungai & 3 others; Ng'ang'a & 2 others (Intended Plaintiffs) (Environment and Land Case E035 of 2025) [2025] KEELC 5325 (KLR) (15 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5325 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ENVIRONMENT AND LAND CASE E035 OF 2025

JM ONYANGO, J

JULY 15, 2025

BETWEEN

KINYUA MBUGUA ..... PLAINTIFF

AND

DAVID MAINA MUNGAI ..... 1ST DEFENDANT

BARCLAYS BANK OF KENYA ..... 2ND DEFENDANT

GEORGE MUIRUTI T/A LEAKEYS AUCTIONEERS ..... 3RD DEFENDANT

PETER MWANGI KIMANI ..... 4TH DEFENDANT

AND

CECILIA WANGARI NG'ANG'A ..... INTENDED PLAINTIFF

MOSES NGUGI KINYUA ..... INTENDED PLAINTIFF

FELISTER WANJIKU KINYUA ..... INTENDED PLAINTIFF

RULING

1. What is before me for determination are two separate applications, each imploring the court to breathe life anew into a suit declared dormant. The first one is the Chamber Summons filed on 18th March 2024, based on the affidavit of one Cecilia Wangari Ngaga, sworn on even date. The Applicants later swore a further affidavit on 24th May 2024.

2. Not long thereafter, the second application was brought by way of a Notice of Motion dated 20th September 2024 once again premised on the supporting affidavit of Cecilia Wangari Ngaga, sworn on 20th September 2024.

3. Each application seeks, inter alia the revival and reinstatement of the suit, an entreaty that now demands the Court's attention.

4. The applications are anchored on the grounds set out in the respective Chamber Summons and Notice of Motion and further on the Supporting Affidavits of Cecilia Wangari Ngaga.

6. In the said affidavits, the Applicants deponed that the instant applicants are siblings and children of the Plaintiff, one Kinyua Mbugua (deceased). She avers that Kinyua Mbugua (deceased) passed away on 24th March 2017.

7. It is the Applicants averment that Kinyua Mbugua (deceased) instituted the suit against the defendants herein seeking to stop the 2nd Defendants from exercising its statutory power of sale against the parcel of land known as L.R.Nguruibi/Ndiuni/66 (the suit property).

8. The applicants aver that during the pendency of the suit, Kinyua Mbugua (deceased) was taken ill and was unable to effectively proceed with the case. In support of this assertion, they annexed his medical records to the further affidavit, seeking to demonstrate that his ill health had rendered him incapable of advancing the proceedings during his lifetime. Ultimately, the suit was dismissed for want of prosecution.

9. The Applicants attribute the delay in bringing forth the present application to what they describe as a protracted and frustrating inability to locate the court file. They contend that this procedural obstacle made it impossible to take earlier action.

10. The Applicants further state that the delay was compounded by a prolonged inability within the family to reach consensus on who ought to step forward as the legal substitute for the late Kinyua Mbugua (deceased). The Applicants contend that this internal impasse not only hindered progress in reviving the instant suit but also stalled the succession process. It was not until 14th September 2023 that a Grant of Letters of Administration ad Litem was finally issued.

11. The Applicants now seek to have the suit revived, which, by operation of law, abated on 24th March 2018. They seek a restoration that would allow the matter to once again be heard on its merits.

12. The Applications were met with firm opposition. The Respondents entered the fray with their replies. The 1st Respondent filed a Preliminary Objection dated 29th January 2025, the 2nd and 3rd Respondents filed Grounds of Opposition dated 25th February 2025 and the 4th Respondent filed a Replying Affidavit sworn on 12th November 2024.

13. The Respondents essentially contend that the Applications rest on no firm footing, are devoid of merit, and amount to nothing more than a calculated misuse of the court process. In their view, the Applicants have squandered both time and procedure, and the Court ought not to lend its authority to such conduct.

14. It is the Respondents' primary position is that the late Plaintiff took no meaningful steps to prosecute the case during his lifetime, allowing it to languish in neglect. Following his unfortunate demise on 24th March 2017, the duty to act shifted to the legal representatives of his estate. Yet even then, no prompt or deliberate effort was made to substitute the deceased within the time prescribed by law. That failure, the Respondents contend, was not born of difficulty or unavoidable delay, but of pure indolence. In their view, it is this prolonged and unjustified inaction that inexorably led to the abatement and eventual dismissal of the suit.

15. Accordingly, the Respondents urge that the Applications be dismissed with costs, as a matter of both law and principle.

16. The court directed the applications to be canvassed by written submissions which direction was duly complied with by the parties.

Issues

17. Having carefully perused the applications, the response in opposition and the parties' respective submissions, the following issues emerge for determination:

    i. Whether the applicants have demonstrated sufficient cause to warrant revival of the abated suit.

    ii. Whether the suit ought to be reinstated.

    iii. Who shall bear the costs of the application.

Analysis and Determination

18. The task before me is not merely to recite the law, but to apply it with fidelity to the facts, guided always by the interests of justice and the solemn duty to ensure that the judicial process is neither trivialized nor frustrated.

19. The Applications seek to revive the abated suit, have the dismissed matter reinstated, and substitute the Applicants herein in place of the Plaintiff, Kinyua Mbugua (deceased), on the strength of the Grant of Letter of Administration issued on 14th September 2023.

20. It bears reiterating that the first application was filed on 18th March 2024 followed by the second application on 20th September 2024. These applications to revive the suit were filed nearly 6 years after the matter had abated.

21. The Applicants argue that the matter has never been conclusively heard or determined on its merits. They urge that the doors of justice should not remain shut, and that they are entitled to their day in court.

22. The parties have acknowledged that Kinyua Mbugua (deceased) instituted the suit on 10th September 2012, filed together with an application filed on even date seeking inter alia injunctive orders. The Application dated 10th September 2012 did not proceed which resulted in an application dated 22nd April 2016 filed by the 2nd and 3rd Respondents which sought the dismissal of the Plaintiff's suit for want of prosecution. The Plaintiff, Kinyua Mbugua (deceased) passed away on 24th March 2017 and his advocates sought 2 months to substitute the deceased Plaintiff. The substitution failed to materialize and the suit was eventually dismissed on 18th February 2019 with costs to the 2nd and 3rd Respondents.

23. The first question that falls for determination is whether the Applicants have shown sufficient cause to justify the revival of a suit that has long abated. The answer to this inquiry strikes at the very heart of whether the Court's discretion may properly be invoked.

24. Order 24 of the Civil Procedure Rules, 2010, provides the procedural framework that guides the Court when a suit is interrupted by the death of a party. It sets out the steps to be followed in such solemn circumstances, ensuring that death does not, by itself, extinguish the pursuit of conclusive justice.

25. More particularly, Order 24, Rule 3 addresses the scenario where one of several plaintiffs, or a sole plaintiff, dies in the course of proceedings. The provision stipulates as follows:

    "

"1. Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff 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 plaintiff to be made a party and shall proceed with the suit.

2. Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:

Provided the court may, for good reason on application, extend the time."

26. Additionally, Order 24, Rule 7 sets out the legal consequences that arise from the abatement or dismissal of a suit under this Order. It provides guidance on the effect such outcomes have on the rights of the parties and the status of the proceedings. It states:

"7.

(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."

27. The law, ever mindful of the need for finality, does not easily summon back to life that which has long lain dormant. Yet it is not so rigid as to close its eyes to genuine hardship. While the passage back to revival of an abated suit is narrow, it is not sealed. For those who can show that their delay to revive the suit was born not of indifference, but of true impediment, the Court may, in the interest of justice, permit the suit to rise once more and be heard upon its merits, rather than consigned forever to the silence of procedural death.

28. It is not in dispute that by the time the applications were brought, nearly 6 years had passed since the suit abated.

29. The Applicants have offered an explanation for the delay. They assert that, being a large and extended family, it was not an easy task to reach consensus on who should assume the role of administrators of the estate of Kinyua Mbugua (deceased).

30. Learned counsel for the 1st Respondent submits that the willful neglect of the estate's legal representatives to substitute the deceased Plaintiff within the prescribed time does not constitute sufficient cause to justify the Court's exercise of discretion in favour of the Application, nor does it justify the delay.

31. Similarly, learned counsels for the 2nd and 3rd Respondents argue that the inordinate delay was not sufficiently justified. They argue that the Applicants have failed to demonstrate the requisite diligence and caution the Court against reviving the suit, warning that to do so would undermine the fundamental principle of the expeditious administration of justice and encourage indolence by parties to a suit.

32. Learned counsel for the 4th Respondent contend that the Applicants have failed to provide sufficient evidence to justify the inordinate delay.

33. Order 24 of the Civil Procedure Rules was comprehensively examined by the Court of Appeal in the case of Rebecca Mijide Mungole & Another v Kenya Power & Lighting Company Ltd & 2 Others [2017] eKLR, where the Court stated as follows:

> " Where a suit abates, no fresh suit can be brought on the same cause of action because it is extinguished and cannot be maintained in the form it was originally presented. Because the suit will only abate where, within one year of the death of the plaintiff no application is made to cause the legal representative of the deceased plaintiff to be joined in the proceedings, it is imperative and we may add, logical, where the legal representative is not so joined within one year, that an application be made for extension of time to apply for joinder of the deceased plaintiff's legal representative. It is only after the time has been extended that the legal representative can have capacity to apply to be made a party. Order 24 must be construed by reading it as a whole and the sequence in which it is framed must be followed without short circuiting it. The proviso to rule 3(2) to the effect that the court may, for good reason on application, extend the time goes to show that without time being extended, no application for revival or joinder can be made. It is the effluxion of time that causes the suit to abate. It is that time that must, first be extended. Once time has been enlarged, only then can the legal representative bring an application to be joined in the proceedings. Again it is only after the legal representative has been joined as a party that he can apply for the revival of the action. In our view there is nothing objectionable to making an omnibus application for all the three prayers. But it is incompetent to seek joinder or revival when the prayer for more time to apply has not been granted...
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> ...After time to apply has been enlarged and the legal representative has been joined, the focus and burden shifts to him to show cause why the abated suit should be revived. A prayer for the revival of the suit cannot be allowed as a matter course or right. If the applicant demonstrates and the court is satisfied that he was prevented by any sufficient cause from continuing the suit, the court will allow the revival of the suit upon such terms as to costs or otherwise as the court may think fit."

34. Essentially, Order 24 does not merely outline procedural steps; it embodies a deliberate sequence through which justice may be reclaimed after abatement. The enlargement of time, the joinder of the legal representative, and the subsequent revival of the suit are not isolated acts but interdependent steps which must be observed in their proper order. To disregard that structure would be to erode the careful balance struck by the rules between the finality of litigation and the equitable discretion of the Court.

35. It is not enough for an applicant to simply desire revival; the law requires that such desire be anchored in diligence, supported by explanation, and framed within the procedure that the Rules have plainly prescribed.

36. In applying that legal framework to the present matter, the Court must examine whether the Applicants have satisfied the threshold required to invoke the Court's discretion.

37. I reiterate that the explanation offered for the prolonged delay in reviving the suit is that the Applicants, coming from a large and extended family, were unable to promptly agree on suitable administrators for the estate of Kinyua Mbugua (deceased).

38. While familial complexity is not uncommon in succession matters, and while disagreement over representation may pose genuine difficulty, such circumstances must be weighed against the obligation to act with reasonable expedition once a party to a suit has passed on.

39. Counsel for the 1st Respondents notes that the Applicants have invited this Court to be guided by the decision in Rebecca Mijide Mungole & Another v Kenya Power & Lighting Company Ltd & 2 Others (Supra). Yet as the 1st Respondent observes, the Court of Appeal in that very case dismissed the appellants' claim on grounds strikingly similar to those now advanced by the Applicants.

40. The 1st Respondent submits that the Applicants were at all times aware of the existence of this suit, yet chose not to take any meaningful steps to ensure the timely substitution of the deceased Plaintiff. Counsel points out that this was not a case of ignorance or oversight, but of conscious inaction in the face of known proceedings. It is further noted that the Applicants were fully aware that the suit property had been advertised for sale and was ultimately sold to the 4th Respondent pursuant to the 2nd Respondent's power of sale.

41. The 1st Respondent's submits the legal representatives of the deceased Plaintiff, by their own willful neglect, failed to act with the promptitude that the law and the ends of justice demand. Such inaction, it is urged, cannot be cloaked as sufficient cause, nor can it justify a delay so prolonged as to erode the very foundations of orderly litigation. To revive the suit in the face of such indifference, counsel argues, would be to reward delay and weaken the discipline of the judicial process.

42. Learned counsel for the 2nd and 3rd Respondents submits that it is imperative for the Applicants to establish sufficient cause before the court exercises its discretion to revive the suit. See: Wachira Karani v Bildad Wachira [2016] eKLR.

43. Counsel for the 2nd and 3rd Respondents contend that the Applicants have failed to offer any satisfactory explanation for the inordinate delay of nearly 6 years. In their view, the lapse is not merely lengthy but inexcusable, marked by a conspicuous absence of urgency or effort. They assert that the Applicants have exhibited indolence throughout and have not demonstrated any semblance of diligence in addressing the substitution of the late Kinyua Mbugua.

44. The 4th Respondent similarly submits that the Applicants have failed to provide sufficient cause to warrant the inordinate delay. Learned counsel for the 4th Respondent invited the court to be guided by the decisions in: Joseph Gachuhi Muthanji v Mary Wambui Njuguna [2014] KECA 451 (KLR), Nduhiu (Deceased) v Nairobi City County & 2 others; Theuri (Applicant) [2023] KEELC 19172 (KLR).

45. The 4th Respondent contends that the Court's discretion to revive a suit that has abated is not to be exercised lightly. It must first be satisfied that the Applicant was prevented by sufficient cause from taking the necessary steps to continue with the proceedings. Absent such cause, the law offers no refuge from the consequences of delay.

46. Moreover, the 4th Respondent submits that the Applicants have placed no evidence before the Court to substantiate their claim that the court file went missing, as alleged in their affidavits. In the absence of any supporting material, the assertion remains unproven and incapable of sustaining the weight the Applicants seek to place upon it.

47. Have the Applicants demonstrated sufficient cause to justify the delay? On the strength of the record before me, I am inclined to concur with the Respondents' position.

48. The Applicants' explanation, rooted in familial discord and delayed consensus, falls short of the exacting standard our Rules demand. Their account reads more as a lament of inertia than a demonstration of impediment; it is a plea without substance. In the absence of any compelling evidence that they undertook earnest steps to resolve the impasse, their delay cannot be excused. To grant revival on such unanchored grounds would degrade the discipline of procedure and undermine the certainty that undergirds every judicial process.

49. Accordingly, I find that no sufficient cause has been shown, and the hand of equity cannot reach where diligence has so plainly failed.

50. Having found that the Applicants have failed to show good cause for their long delay, there is no need for the Court to grapple with the question of whether the suit should be reinstated. The foundation upon which that question rests has crumbled beneath the weight of the Applicants' own inaction. Without a proper basis for revival, there is nothing upon which reinstatement may lawfully stand. The Court cannot breathe life into what the law has rightfully laid to rest.

51. Accordingly, the Applications dated 18th March 2024 and 20th September 2024 must fail. They are hereby dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED, AT THIKA THIS 15TH DAY OF JULY 2025.

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J. M. ONYANGO

JUDGE

In the presence

Miss Wamaitha for the Applicants

Mr Manzi for Mr Kahuthu for the 1st Defendant

Miss Musyoka for Miss Ogula for the 2nd and 3rd Defendants

Court Assistant: Hinga