



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MILIMANI

ELC. CASE NO. 1006 OF 2016

JOHNSON HOME GICHUHI

GEORGE MURIUKI GICHUHI

(Suing as the Managers of the Estate of

Margaret Wanjiru Gichuhi).....PLAINTIFFS/APPLICANTS

VERSUS

ISAAC GATHUNGU WANJOHI.....1ST DEFENDANT/RESPONDENT

ISABELLAH NYAGUTHII WANJOHI.....2ND DEFENDANT/RESPONDENT

WAHFARM LIMITED.....3RD DEFENDANT/RESPONDENT

ZACKY HINGA MUNYUA.....4TH DEFENDANT/RESPONDENT

KOOME MBOGO T/A

KOOME MBOGO & CO. ADVOCATES.....5TH DEFENDANT/RESPONDENT

CITY COUNCIL OF NAIROBI.....6TH DEFENDANT/RESPONDENT

RULING

Through the application dated 3rd April 2017, the Plaintiffs seek to revive this suit and to substitute the name of the deceased Plaintiff with that of Johnson Home Gichuhi who is the Administrator and legal representative of the estate of the deceased Plaintiff. The Plaintiffs instituted HCCC No. 114 of 2007 as managers of the Estate of the Plaintiff on 2nd February 2007 seeking cancellation or revocation of the conveyance of L. R. No. 209/1461 (“the Suit Property”) to the 1st to 3rd Defendants on the grounds that it was obtained through fraud or mistake.

The Plaintiffs filed an application for injunction and got temporary orders restraining the Defendants from dealing with the Suit Property on 5th February 2007. The 1st to 3rd Defendants filed their defence in which they aver that they purchased the Suit Property from Margaret Wanjiru Gichuhi for value and had transferred it before the Plaintiffs were appointed managers of her estate. Margaret died on 12/1/2009. The suit abated one year after her death since no application to substitute her was made.

The Applicants attribute the delay in bringing the application for substitution to the loss of the court file and state that the application for reconstruction could only be made when the Plaintiffs' advocates on record took over this matter. Limited grant of letters of administration were issued to Johnson Home Gichuhi on 19th August 2013, which is more than four and a half years after the Plaintiff's demise. The application for reconstruction was filed on 28th June 2016. The Deputy Registrar allowed that application on 4/7/2016. The application for revival of the suit was filed on 4/4/2017.

The Applicant argues that the court can revive a suit if sufficient cause is shown. He relies on the case of **Said Sweilem Gheithan Saanum v Commissioner of Lands (being sued through Attorney General) and 5 Others [2015] eKLR** in which the court analysed the three stages for the revival of a suit under Order 24 of the Civil Procedure Rules. The court noted that as a general rule the death of a Plaintiff does not cause a suit to abate if the cause of action survives the death of the Plaintiff. An application for substitution must be made within one year of the Plaintiff's death or such time as the court may in its discretion determine. Secondly, if no application is made within one year or within the time extended by leave of court, then the suit shall abate. Thirdly, the legal representative of the deceased Plaintiff may apply to revive the abated suit if he was prevented by sufficient cause from continuing the suit. The court noted that abatement takes place on its own force by passage of time and omission to take the necessary steps within one year.

The applicant in the instant case has not sought to enlarge the time for seeking revival of the suit yet the suit abated one year after the death of the Plaintiff. The Applicant would have had to demonstrate good reason for the court to extend the time for substituting the Plaintiff in the abated suit.

The 1st to 3rd Defendants oppose the application for revival of the suit. They maintain that this suit was filed purely to frustrate them from taking possession of the Suit Property which they bought from the Plaintiff in 2002. The 1st Defendant depones in his affidavit that Johnson Home Gichuhi and George Muriuki Gichuhi have constructed structures on the Suit Property which they have let out as residential and commercial premises which yield monthly rent of about Kshs. 450,000/=. The 1st to 3rd Defendants urge that they will be greatly prejudiced if the application is allowed.

Musinga J.A. in **Attorney General v Law Society of Kenya & Another [2013] eKLR** stated that sufficient cause must be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubts in a judge's mind. The explanation should not leave unexplained gaps in the sequence of events.

The Defendants relied on the case of **Issa Masudi Mwabumba v Alice Kavenya Mutunga & 4 Others [2012] eKLR** in which Koome JA referred to the case of **Leo Sila Mutiso v Rose CA Nai 255 of 1997 (unreported)** on the principles to guide the court on the exercise of judicial discretion to extend time or to revive a suit. The principles are the length of delay, the reason for the delay, the chances of the appeal succeeding and the degree of prejudice to the respondent if the application is granted.

Applying those principles to this case, the application for substitution was made on 4/4/2017. The Plaintiff died on 12/1/2009. Limited grant of letters of administration were issued to the Applicant on 19/8/2013. The delay in seeking substitution is over seven (7) years from the date of the Plaintiff's demise and almost four years from the date of grant of limited letters of administration to the Applicant who was the Plaintiff's brother. The reason given for delay is the loss of the court file and change of advocates. The reasons are not persuasive, rational, plausible, logical, convincing, reasonable and truthful. The explanation has unexplained gaps in the sequence of events and leaves doubts in the judge's mind.

The court dismisses the application with costs to the 1st to 3rd Defendants.

Dated and delivered at Nairobi this 14th day of July 2017.

K. BOR

JUDGE

In the presence of: -

Ms. Maina for the Plaintiffs/Applicants

Ndungu for the Defendants/Respondents

Mr. V. Owuor- Court Assistant