



**Arodi & another (Suing through their Attorney Nicodemus Atito Arodi) v Midiwo;
Housing Finance Company - Kenya & another (Third party) (Environment &
Land Case E022 of 2023) [2025] KEELC 189 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 189 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E022 OF 2023
E ASATI, J
JANUARY 30, 2025**

BETWEEN

IDA NEREAH ADHIAMBO ARODI 1ST PLAINTIFF

JEREMIAH ARNOLD OPANDE ARODI 2ND PLAINTIFF

SUING THROUGH THEIR ATTORNEY NICODEMUS ATITO ARODI

AND

WASHINGTON JAKOYO MIDIWO DEFENDANT

AND

HOUSING FINANCE COMPANY - KENYA THIRD PARTY

LEGEND VALUERS LIMITED THIRD PARTY

RULING

1. This ruling is in respect of the Notice of Motion application dated 4th July, 2024 expressed to be brought pursuant to the provisions of Sections 1A, 1B, 3A and 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules.
2. The application seeks for an order that the ruling delivered by the court on 6th June, 2024 be reviewed, varied and/or set aside due to an omission and/or unintentional error which has come to the attention of the Applicant.
3. The application is based on the grounds that the honourable court delivered its ruling on 6th June, 2024 by dismissing the application on technicality. That the Applicants being the legal Representative of the estate of the deceased are desirous of pursuing the instant matter on behalf of the deceased's estate.
4. That the Plaintiff and the 1st and 2nd Third Parties will not be prejudiced if the orders sought are granted.



5. The application was supported by the Supporting Affidavit sworn jointly by the Applicants on 4th July, 2024.
6. The application was opposed by the 1st Third Party vide the Grounds of Opposition dated 23rd July, 2024. The 1st Third Party's case is that the application as presented is misconceived, frivolous and constitutes an abuse of the process of the court as the reliefs sought do not apply at all to the circumstances of the instant case. That there is no error in law or fact in the ruling dated 6th June, 2024 to found the basis for review of the decision. That the application is in total disregard of the honourable court's ruling delivered on 25th October, 2023 by Hon. Justice B. Olao on the 1st Third Party's Notice of Motion application dated 5th August, 2023 which has sought and obtained an order confirming abatement of the Defendants' proceedings and the suit against the 1st Third Party. That the 1st Third Party is unduly prejudiced by the instant application should it be allowed on account of having been held in abeyance while awaiting for the Applicant's action to proceed with the case, if at all and having incurred costs of the proceedings herein, that the same should not be wished away as simply as sought by the Applicants who have not demonstrated any due diligence in ascertainment of assets, and liabilities of the deceased, including the subsistence of the suit after having held grant of Letters of Administration for 2 years. That the Applicants have failed to demonstrate justification for the court to exercise its discretion in their favour.
7. The application was argued orally on 6th November, 2024. I have taken the oral submissions in to account.
8. It is admitted that there is no error apparent on the face of the ruling. That the error was in the application that was dismissed.
9. This court however has power under Section 3A of the *Civil Procedure Act* to make such orders as may be necessary for the ends of justice to be met or to prevent abuse of the process of the court.
10. The Applicants seek for a chance for the estate of the deceased to participate in these proceedings and pursue its claim against the Third Parties. The ruling sought to be reviewed dismissed an application for extension of time within which to substitute the deceased with his personal representatives and for revival of the suit because the application was brought by only one personal representative to the exclusion of the other contrary to law.
11. The current application has been brought by both personal representatives. Order 24 Rule 7 (2) gives the court power to make an order for revival of the suit. Taking into account the provisions of article 159 of *the Constitution*, the ruling herein dated 25th October 2023 where the court observed that the personal representative may for good cause seek for extension of time to revive the Third Party proceedings, and the provisions of the law cited herein, I find that it is in the interest if justice that the application be allowed. The 1st Third Party will be compensated by way of thrown away costs.
12. I therefore hereby allow the application dated 4th July 2024 and make the following orders:-
 - i. The orders issued by this court on 6/6/2024 dismissing the application dated 1st March 2024 are reviewed and set aside
 - ii. The Third party proceedings (suit) instituted by the deceased herein are hereby revived.
 - iii. Time for substitution of the deceased is hereby extended.
 - iv. The deceased be and is hereby substituted by his personal representatives namely; Beatrice A. Muganda and Samson O. Midiwo.



- v. Throw away costs of Kshs.40,000 to the 1st Third Party to be borne by the estate of the deceased.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 30TH DAY OF JANUARY, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

No appearance for the Plaintiff.

Museve for the applicants

Ragot for the 1st Third Party.

No appearance for the 2nd Third Party.

