



Ithau & 3 others v Nandlal and Company Limited & 4 others; Action Team of South C Ward Association & another (Interested Parties) (Environment & Land Case 147 of 2017) [2024] KEELC 893 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEELC 893 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 147 OF 2017
LN MBUGUA, J
FEBRUARY 22, 2024**

BETWEEN

**PHOEBE MUENI ITHAU 1ST PLAINTIFF
NARA HOLDINGS LTD 2ND PLAINTIFF
MOLLY KIRAGU (SUING AS THE ADMINISTRATRIX OF THE ESTATE OF SAMUEL KARAGU MUCHIKI) 3RD PLAINTIFF
MWANGI STEPHEN MUREITHI 4TH PLAINTIFF**

AND

**NANDLAL AND COMPANY LIMITED 1ST DEFENDANT
NAIROBI CITY COUNTY 2ND DEFENDANT
NATIONAL LAND COMMISSION 3RD DEFENDANT
THE HON. ATTORNEY GENERAL 4TH DEFENDANT
CHIEF LAND REGISTRAR 5TH DEFENDANT**

AND

**ACTION TEAM OF SOUTH C WARD ASSOCIATION INTERESTED PARTY
KENYA REVENUE AUTHORITY INTERESTED PARTY**

RULING

1. Before me is the application dated 23.10.2023 where the applicant (introducing herself as the legal representative of the 1st plaintiff) seeks orders for the revival of the suit which abated and for the substitution of the plaintiff. The applicant contends that the 1st plaintiff died on 11.11.2018. That the



- delay in substituting the 1st plaintiff was occasioned by events beyond her control in the quest to get a Grant. She only obtained the same on 8.6.2020.
2. On 29.11.2023, the court gave directions on the prosecution of the application, of which the respondents were to file and serve their responses by 14.12.2023. None were filed.
 3. I have considered the issues raised herein including the submissions of the applicant dated 11.1.2024.
 4. The provisions of Order 24 rule 4 (1) of the Civil Procedure Rules stipulate that;

“Where one or two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant 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 defendant to be made a party and shall proceed with the suit”.
 5. Sub rule 7 (2) thereof makes provision for the process of revival of a suit which has abated. See- Muriithi Ngwenya v Gikonyo Macharia Mwangi & 2 others [2018] eKLR. In the case at hand, the applicant has given a plausible explanation that the process of getting the grant in the probate court took long to be finalized. In that regard, I am inclined to allow the application dated 23.19.2023 with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Muyuka for Plaintiff

Njihia holding brief for Mwangi for 1st Defendant

Court assistant: Eddel

