



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njau & 4 others v Maina & 8 others (Environment & Land Case  
431 of 2008) [2024] KEELC 907 (KLR) (20 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 907 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 431 OF 2008**

**MD MWANGI, J  
FEBRUARY 20, 2024**

**BETWEEN**

**EDWARD MICHARE KIBE NJAU ..... 1<sup>ST</sup> PLAINTIFF  
MARGARET WAMBUI MBUGUA ..... 2<sup>ND</sup> PLAINTIFF  
JACINTA NJOKI KANYI ..... 3<sup>RD</sup> PLAINTIFF  
MAGDALINE NJERI NDUNGU ..... 4<sup>TH</sup> PLAINTIFF  
GRACE MUMBI KANYI ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**BENARD KUNGU MAINA ..... 1<sup>ST</sup> DEFENDANT  
JAMES W. MUNGAI ..... 2<sup>ND</sup> DEFENDANT  
ELIUD P. NJOROGE ..... 3<sup>RD</sup> DEFENDANT  
SOCIETY LIMITED ..... 4<sup>TH</sup> DEFENDANT  
NATIONAL LAND COMMISSION ..... 5<sup>TH</sup> DEFENDANT  
LAND REGISTRAR ..... 6<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL ..... 7<sup>TH</sup> DEFENDANT  
KIMANI MWANGI ..... 8<sup>TH</sup> DEFENDANT  
LABAN TOLE MWAILENGO ..... 9<sup>TH</sup> DEFENDANT**



## RULING

(In respect of the Plaintiffs' Application dated 17th November, 2023 seeking to substitute the 1<sup>st</sup> Plaintiff who died on 21<sup>st</sup> June 2018)

### Background

1. This ruling is in respect of the Plaintiffs' application dated 17th November, 2023 seeking for orders that:
  - a. Spent
  - b. The Applicant Florence Wairimu Kibe the wife of the 1st Plaintiff (deceased) be granted leave to substitute Edward Michar Kibe (1st Plaintiff (deceased)) with herself Florence Wairimu Kibe (Proposed 1st Plaintiff) as the 1st Plaintiff in this matter due to the unfortunate passing of the original Plaintiff, and to amend all Court documents and records accordingly.
  - c. This Honourable Court be pleased to grant the 1st, 3rd and 5th Plaintiffs/Applicants leave to file an amended Plaint and additional necessary replies thereto, in consideration of the exceptional circumstances surrounding the substitution of the Plaintiff.
  - d. This Honourable Court be pleased to grant the said Applicants leave to file further, supplementary or other witness statements, list of documents and copies thereof.
  - e. The costs of this Application be provided for.
  - f. Any other or further orders as this Honourable court will deem it fit to grant.
2. The application is premised on the grounds on the face of it and further supported by the Supporting Affidavit of Grace Mumbi Kanyi, the 5th Plaintiff herein, deponed on the 17th November, 2023, on her own behalf and that of the 1st and 3rd Plaintiffs. The deponent avers that the 1st Plaintiff, Edward Michar Kibe, died on 21st June, 2018 hence the need to be substituted. She avers that the Letters of Administration in respect of the 1st Plaintiff were issued to Florence Wairimu Kibe, his widow, on 26th November, 2019 in the Kiambu Succession Cause No. 311 of 2019.
3. She states that it is only after the current Advocates took over the matter that it became apparent that certain pertinent issues and claims were omitted from the original pleadings due to the lack of diligence and oversight by the former advocate.
4. The deponent states that the amendment is intended at ensuring that all relevant claims and defences are properly presented before the court for the proper and just resolution of the dispute.
5. The deponent asserts that the application for substitution and amendment is made in good faith and in the interest of justice. She urged the court to allow the application so that the issues raised herein may be determined on merit.
6. Counsel for the 1st, 2nd, 3rd and 4th Defendants informed the court that they will be opposing the application. However, despite being granted adequate time to file their responses to the application, none was filed.
7. There was no appearance for the 5th Defendant despite service. The 6th, 7th, 8th and 9th Defendants' Counsel on the other hand stated that they would not be opposing the application.



## Court's Directions

8. The Court directed that the application be dispensed with by way of written submissions. The Plaintiffs/Applicants' submissions are dated 13th February, 2024. The 1st to 4th Defendants'/ Respondents' submissions are dated 16th February, 2024. The 1<sup>st</sup> – 4<sup>th</sup> Defendants' submissions were limited to issues of law since they had not filed a replying affidavit in answer to the application under consideration.

## Issues for determination

9. I have considered the application and submissions filed herein. The issues for determination in this matter are: -
- a. Whether the order for substitution of the 1st Plaintiff with his legal representative should be allowed; and
  - b. Subject to the finding in (a) above, whether the Plaintiffs should be granted leave to amend the Plaint pursuant to the substitution.

## Analysis and determination

### A. Whether the order for substitution of the 1st Plaintiff with his legal representative should be allowed

10. Order 24 of the [Civil Procedure Rules](#) provides as follows:

- “ 1. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues.
2. Where there are more plaintiffs or plaintiffs alone or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or defendant or defendants.
- 3 (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 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 sub rule (1), the suit shall abate so far as 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.
- 4 .....  
5. Where a question arises as to whether any person is or is not the legal representative of a deceased Plaintiff, or a deceased defendant, such question shall be determined by the court.
6. ....



7 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.

11. In the case of *Said Sweilem Gheithan Saanum –vs- Commissioner of Lands (being sued through the Attorney General) & 5 Others* (2015) eKLR, the Court of Appeal explained the provisions of Order 24 of the Civil Procedure as follows:

“There are three stages according to these provisions. As a general rule the death of a plaintiff does not cause the suit to abate if the cause of action survives. But within such time as the court may in its discretion for “good reason” determine, an application must be made for the legal representative of the deceased plaintiff to be made a party. The “good reason” therefore relates to application for extension of time to join the plaintiff’s legal representative to the suit.

Secondly, if no such application is made within one year or within the time extended by leave of the court, the suit shall abate. Where a suit abates no fresh suit can be brought on the same cause of action.

Thirdly, the legal representative of the deceased plaintiff may apply for the abated suit to be revived after satisfying the court he was prevented by “sufficient cause” from continuing with the suit. The effect of an abated suit is that it ceases to exist in the eye of the law. The abatement takes place 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.”

12. From the foregoing, it is clear that a suit abates by operation of law after one year following the death of the plaintiff where no application for substitution is made within one year. That means that no order is required to declare the suit abated.

13. In this case, there is no dispute that the 1st Plaintiff died on 21st June, 2018. His Certificate of Death is annexed to the supporting affidavit. There is also no dispute that no application for substitution of the deceased 1<sup>st</sup> Plaintiff was filed within one year after his death. Therefore, by application of law, the suit by the 1<sup>st</sup> Plaintiff abated one year thereafter.

14. In *Kenya Farmers’ Cooperative Union Ltd. –vs- Charles Murgor (deceased) t/a Kiptabei Coffee Estate* (2005) eKLR, the Court held that;

“...a Court of law has no jurisdiction to Order for substitution where the suit has already abated by operation of law nor to hear and determine a suit that has already abated by operation of law.”

15. I agree with the above court’s pronouncement being the proper interpretation of the law.



**B. Subject to the finding in (a) above, whether the Plaintiffs should be granted leave to amend the  
Plaint pursuant to the substitution.**

16. The second issue was dependent on the findings on the first issue. The court having declined to allow the substitution of the 1<sup>st</sup> Plaintiff as sought, this second issue automatically fails.

17. Consequently, the application herein dated 17<sup>th</sup> November 2023 has no merits and is hereby dismissed with costs to the 1<sup>st</sup> – 4<sup>th</sup> Defendants.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THE 20<sup>TH</sup> DAY  
OF FEBRUARY 2024.**

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Mr. Keyonzo for the 8<sup>th</sup> & 9<sup>th</sup> Defendant

Mr. Omach holding brief for Mr. Ochwo for the 1<sup>st</sup> – 4<sup>th</sup> Defendants

No appearance for the Plaintiffs

No appearance for the 6<sup>th</sup> & 7<sup>th</sup> Defendants

No appearance for the 5<sup>th</sup> Defendant

Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE**

