Keith & 2 others (Sued in Their Capacity as Advocates Practising Under the Firm Name of Daly and Figgis Advocate) v Alibhai (Civil Appeal 359 of 2018) [2024] KECA 1196 (KLR) (20 September 2024) (Judgment)

Neutral citation: [2024] KECA 1196 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPEAL 359 OF 2018

K M'INOTI, M NGUGI & F TUIYOTT, JJA

SEPTEMBER 20, 2024

BETWEEN

HAMISH WOOLER KEITH ..... 1ST APPELLANT

ASHWINI BHANDARI ..... 2ND APPELLANT

NEVILLE P.G. WARREN ..... 3RD APPELLANT

SUED IN THEIR CAPACITY AS ADVOCATES PRACTISING UNDER THE FIRM NAME OF DALY AND FIGGIS ADVOCATE

AND

ZULFIKAR H. ALIBHAI ..... RESPONDENT

(Being an Appeal from the Ruling and Orders of the High Court of Kenya at Nairobi, Commercial and Admiralty Division (G. L. Nzioka, J.) issued on 15th May 2018 in HCCC No. 721 of 2009)

JUDGMENT

1. In exercise of her discretion, Lady Justice Nzioka allowed the revival of Nairobi Commercial and Admiralty Division Civil Suit No. 721 of 2009 which had abated and allowed Shahira Lalani Alibhai (Shahira) and Zaqi Lanani Alibhai (Zaqi), the legal representatives of the estate of Zulfikar Hassanali Alibhai (Deceased), as plaintiffs in place of the deceased.

2. The exercise of discretion was in a ruling delivered on 15th May 2018 which was in answer to an amended application for revival and substitution dated 28th June 2017. The following is the abridged background to the application.

3. Prior to his death on 13th October 2012, the deceased was a partner in the firm of Daly and Figgis Advocates, a firm of advocates in which the three appellants together with the deceased practiced as

partners. He took out civil proceedings against them for recovery of compensation for his share as partner and accrued profits. So that the suit would not abate by dint of the automatic application of Order 24 Rule 3(2) of the Civil Procedure Rules, the application by the legal representative to step into the shoes of the deceased needed to be made within a year of his death but that was not done.

4. In a joint affidavit sworn on 28th June 2017 by the current respondents, made in support of the motion for revival and substitution, the two explained the reason for the delay to be as follows. The death of the deceased left the family with tremendous loss and grief and the 1st respondent as widow instantly became fully responsible for the support and maintenance of her two minor dependent children aged 12 years and 17 years at the time of his death. This affected the family's psychological capacity to immediately deal with an application for probate.

5. Eventually, on 16th October 2013, Shahira, together with one Nazir Hussein Sevany (Nazir) applied for letters of administration to the estate of the deceased in Succession Cause No. 2660 of 2013. Grant of letters of administration intestate was issued to the two on 26th March 2014. The probate file was misplaced for some months at the Probate Registry which caused delay in processing the application for the letters of administration. On 2nd February 2015, Nazir resigned as a co-administrator. Eight (8) days later, on 10th February 2015, a stay of execution in respect to the administration of the estate was issued in separate proceedings, being Nairobi Succession Cause No. 1793 of 2000 in the matter of the Estate of Hassanali Lalji Noorani (Deceased), which continued until 13th October 2016.

6. It is deposed that Zaqi, who is a son of the deceased had been overseas at a university in Canada and only returned to Kenya in late June 2016 and it was therefore not practicable for him to sign any documentation until his return. He was made a co- administrator pursuant to a consent dated 28th June 2016. In the meantime, the court file to the civil claim was unavailable from 2012 until July 2016 when the application for revival and substitution could be made.

7. Shahira deponed that as a practicing advocate in Nairobi and former salaried partner in the firm of Daly and Figgis, she was aware that Mr. Kenneth Hamish Wooler Keith (the 1st appellant) was in charge of the law firm as senior and managing partner and head of the corporate and commercial department handling complex legal transactions and was fully conversant with the dispute together with the accounting staff who prepared the relevant accounts being available.

8. The appellants resisted the amended notice of motion through an affidavit sworn by Mr. Kenneth Hamish Wooler Keith on 25th July 2017. A great part of the affidavit is dedicated to an illustration as to why, in his view, the delay in bringing the motion is not only unexplained but not adequately addressed. This was repeated in the submissions made before the trial court and reiterated before us. We propose to set them out as we consider the merit of the appeal.

9. He also raised other issues; the first is that, following the filing of the amended application, the appellants' earlier opposition to the application on the basis that the respondents had not prayed for revival of the abated suit, before requesting for substitution of the deceased plaintiff, was moot.

10. Mr. Keith then reiterated dispositions in paragraph *12* (he must have meant paragraph *13*) of his affidavit sworn on 7th June 2016. There, he asserted that the inordinate delay in prosecuting the main suit was bound to be a miscarriage of justice, to their detriment. This was borne out of the fact that some of the people who would have been called as crucial witnesses for the defence had left the firm; the passing of time and advancing of age had made the memory of the defendants' crucial witnesses to fade; he gave himself and the senior partner as examples, whose ages at the time of making the affidavit were 70 and 88 years respectively; as the cause of action was personal to the deceased, they would suffer

irreparable prejudice as they would have no avenue to test the veracity of the various allegation by the deceased through cross- examination.

11. In the ruling of 15th May 2018, which is the subject of this appeal, the trial court (G.L. Nzioka, J.) allowed both prayers, for revival and substitution. That aggrieved the appellant who sought to challenge the decision on four (4) broad heads:-

    i. Under Order 24 Rule 3 of the Civil Procedure Rules, 2010, a legal representative who seeks to be joined to a suit in place of a deceased plaintiff one year after the death, has to make an application for extension of time and avail good reasons as to why the application for substitution could not be made within the prescribed one (1) year period.

    ii. Under Order 24 Rule 7 there must exist sufficient reason/s to merit revival of a suit that has abated;

    iii. Under Order 24 Rule 3 of the Civil Procedure Rules, 2010, there cannot be substitution of a deceased plaintiff when a cause of action does not survive the plaintiff;

    iv. In considering whether to revive an abated suit, a court is obligated to also look at the possible prejudice to be suffered by the defendants were the suit to be revived.

12. The issues to be determined so as to resolve this appeal coincide with the matters raised under those heads.

13. The appellants contend that, whereas there was a prayer for revival of the abated suit in the application of 28th June 2017, there was no prayer seeking extension of time to have the respondents to be substituted in place of the deceased plaintiff. The appellants also observe that the application only refers to Order 24 Rule 7(2) of the Civil Procedure Rules (CPR) and makes no mention of Order 24 Rule 3. We are told that the latter Rule is crucial, not in the least because the respondents were obligated, under the proviso thereto, to give reasons why the said extension should be granted by the superior court. In support of this argument the appellants relied on the decision of this Court in Said Sweilem Gheithan Saanum v Commissioner of Lands (being sued through Attorney General) & 5 others [2015] eKLR.

14. The trial court is assailed for presuming that once an order for revival of a suit is granted under Order 24 Rule 7(2), that also translates to an order for extension of time to have a deceased plaintiff substituted. The trial court is faulted as rendering the provisions of Order 24 Rule 3 otiose and of no meaning. Further, that by granting an order which was not sought at the trial court, the appellant's right to a fair hearing was infringed.

15. Answering the arguments by the appellants, the respondents submit that the trial court correctly held that the application was brought under the provisions of Order 24 Rule 7 and that an applicant is only required to demonstrate that he was prevented from continuing the suit because of sufficient cause. Counsel for the respondents contended that Order 24 Rule 3 ought to be invoked only where the defendant seeks to recover costs from the estate of a deceased plaintiff.

16. This first issue is critical because if accepted, the appellants' argument that the application for revival and substitution could not be properly granted without a prayer for extension of time, then it could be dispositive of the entire appeal.

17. The provisions we are invited to consider are Order 24 Rule 3 and Order 24 Rule 7 CPR which we set out below:-

    " 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

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.

3(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.....

7(1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

7(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."

18. The parties here posit different implications of the decision of this Court in Said Sweilem Gheithan Saanum and it is imperative that we reproduce the seminal passage of that decision in extenso:-

> " 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 one year of the death of the plaintiff or 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. There have been arguments, as to whether or not a formal order is necessary to confirm the fact of abatement. See *M'mboroki M'arangacha v Land Adjudication Officer, Nyambene and 2 others, Meru H.C.C. Application No.45 of 1997* where the High Court held that an order to record the abatement of a suit was not necessary. See a similar holding in KFC Union v Charles Murgor (Deceased) NBI HCCC No.1671 of 1994. From the language of Order
>
> 24 Rule 3(2) aforesaid, earlier reproduced and highlighted, the fact of abatement has to be brought to the notice of the court, proved and accordingly recorded in order for the defendant to apply for costs. It means that even though the legal effect of abatement may have already taken place, for convenience an order of the court is necessary for a final and

effectual disposal of the suit. We borrow the statement of Lord Denning in MacFoy v United Africa Co. Limited (1961) 3 All ER 1169, that

> "If an act is void, then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado. Though it is sometimes convenient to have the court declare it to be so...."

It follows that the question of whether or not to extend time or grant an order for revival of an abate suit is essentially one of discretion."

19. The appellants propose that where a suit has abated, then a legal representative of a deceased plaintiff must make a two stepped application so as to be entitled to revival of the abated suit. The first is to seek extension of time under Rule 3(2) and then for revival under Rule 7(2). The respondents think that only the latter is necessary.

20. The starting point is to note that a suit against a deceased plaintiff abates if, within one year of the deceased's death, no application for substitution is made by the legal representative. This is the express import of Order 24 Rule 3(2) and as stated in Said Sweilem Gheithan Saanum the "abatement takes place on its own force by passage of time." Yet, as also observed in the same decision, from the language of Order 24 Rule 3(2),

> "the fact of abatement has to be brought to the notice of the court, proved and accordingly recorded in order for the defendant to apply for costs. It means that even though the legal effect of abatement may have already taken place, for convenience an order of the court is necessary for a final and effectual disposal of the suit".

21. There is, however, the proviso to Order 24 Rule 3(2) which gives a court discretion for good reason, on application, to extend the time. What meaning is to be assigned to the proviso in the context of a suit that has abated, bearing in mind such suit will have ceased to exist in the eye of the law? We think, and so hold, that the proviso that gives the court power to extend the time simply means that the court can extend the period of one

    (1) year set out in Rule 3(2) for substitution, but because an abated suit does not exist, substitution can only be done in a suit that has been revived under Rule 7(2). Revival precedes substitution. Yet, out of prudence and from a pragmatic perspective, the legal representative can seek for revival of abated suit and substitution in the same application. While it is preferable that an applicant also cites Rule 3(2), an omission is not fatal if a specific prayer for substitution is made alongside the prayer for revival. Failure to cite a rule that gives the court jurisdiction is not ipso facto fatal. That is the kind of procedural lapse that Article 159(c) of *the Constitution* and the overriding objective demand should not stand in the way of substantive justice. That is also because the abated suit will have obviously ceased to exist by operation of law after passage of the time set out in Rule 3(2) and an application for substitution can only be granted if time for applying is extended. In a sense, the order for extension is subsumed in the order granting substitution. The inevitable conclusion we reach is that the respondent's impugned application, though not expressly seeking extension of time, was properly before court as it was an application for both revival and substitution. And the trial court aptly treated it as such.

22. We add that the appellants were under no illusion as to the substantive plea of the amended notice of motion. This is evident in the robust manner in which the deponent of the replying affidavit filed in opposition repeatedly stated and sought to demonstrate that the respondents did not have good reason not to have filed the application within a year of the death of the deceased plaintiff. The lengthy

disposition in paragraphs 7 to 10 of that affidavit speak to this. There can be no justification for the appellants to lament that they were short-changed on the right to fair hearing. In the end, we reach the same decision as the trial court that there was no merit in the appellant's argument that the motion was still-born for failing to expressly seek extension of time and to specifically cite Rule 3(2).

23. Whether or not a court should allow revival of an abated suit and substitution of a deceased plaintiff out of time is a matter of discretion. However, such discretion is exercisable or only exercisable where the applicant, as a first step, demonstrates that the cause of action in the abated suit survives the death of the plaintiff. So, to the next issue, which is whether the cause of action survived the deceased in the matter at hand.

24. The appellants front two arguments for their contention that the cause of action did not survive the deceased. The first was captured in the replying affidavit under paragraph 13 (ii) as follows:-

> "Given that the cause of action in the main suit was personal to the plaintiff, the defendants stand to suffer irredeemable prejudice on injuries by the fact that they will have no revenue to last the veracity of the veracity allegations by the plaintiff (either before this or another forum) through cross-examination."

25. Our observation is that the argument is an awkward proposition as to why the cause of action was personal to the plaintiff as it really seeks to demonstrate that the appellants' stand to suffer prejudice if the suit is revived because they will be handicapped in testing the veracity of the allegations by the deceased plaintiff through cross-examination. It is submitted elsewhere by the appellants that before a court revives an abated suit, it is obliged to consider the possible prejudice to be suffered by the defendant if the suit is to be continued. We think that the alleged handicap in defending the matter falls under such consideration and we shall return to it shortly.

26. The second reason is that the cause of action involves delivery up of accounts of a partnership business and does not survive the deceased plaintiff. In support of the argument, the appellants' counsel invites us to the following passage in Mulla Vol. 3:-

> " Sub rule (2) provides that where no such application is made the suit shall abate so far as the deceased plaintiff is concerned. Its words 'so far as the deceased plaintiff is concerned' mean that the suit shall primarily abate so far as the deceased plaintiff is concerned, but they do not mean that the suit shall in no case abate as a whole. If the suit is of such a nature that it can proceed in the absence of the legal representative of the deceased plaintiff, it will abate so far only as the deceased plaintiff is concerned. A suit by the partners of a firm to recover a partnership debt is a suit of this nature so that if one of the partners dies pending the suit and his legal representative is not brought on the record, the suit will abate only so far as the deceased partner is concerned. But if it is of such character that it cannot proceed in the absence of a legal representative, it will abate as a whole. A suit by some of the partners of a firm against the other partners for dissolution and accounts is a suit of this character, so that if one of the plaintiffs (or defendant) dies, and his legal representative is not brought on the record, the suit will abate as a whole."

27. We agree with counsel for the respondents that the appellants have misapprehended the passage. Applied to the circumstances in this appeal, the suit by the deceased plaintiff, which is a controversy involving partnership accounts, abated as a whole only because the legal representatives of the deceased partner were not brought on record timeously. This accords with the position in the passage that a cause of action involving partnership accounts survives a deceased plaintiff.

28. This position, if it needed any clarification, was interpreted in an Indian High Court decision of Madhavji Khatau Katira & Another -vs- Trikamdas Narandas Tanna AIR 1969 Guj 205 cited to us by the respondents;

> " These comments made by the learned author Mr. Mulla clearly indicate that in a suit like the present suit, so far as it is a suit for dissolution and accounts, the suit will abate as a whole if one of the plaintiffs or one of the defendants has died and the legal representatives are not brought on the record."

29. It is common ground that while the respondents gave a plethora of reasons why they did not seek substitution timeously, the High Court found only one to constitute sufficient cause as contemplated by Order 24 Rule 7(2). And as correctly submitted by the appellants, because the respondents did not cross-appeal, and we add did not also file a notice of grounds for affirming the decision on grounds other than those relied on by the trial court, our sole duty in that regard is to examine whether the High Court correctly exercised its discretion in accepting that explanation. We carry out this examination within the confines of the limits in which we can review the exercise of discretion by a trial court. This well settled restrain was restated by Bosire JA in Mrao Ltd -vs- First American Bank of Kenya Ltd -vs- 2 Others [2003] eKLR:-

> " ....an appellate court may only interfere with the exercise of judicial discretion if satisfied either:-
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> a. the judge misdirected himself on law; or
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> b. that he misapprehended the facts; or
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> c. that he took into account or considerations of which he should not have taken account; or
>
> d. that he failed to take into account of considerations of which he should have taken account; or
>
> e. that his decision, albeit discretionary one, was plainly wrong"

30. The following is the chronology leading to the filing of the motion. The deceased plaintiff died on 13th October 2012 and so an application for substitution under Order 24 rule 3(2) ought to have been brought on or before 13th October 2013. By that time, the persons entitled to take out grant of administration to the estate of the deceased had not petitioned for the same and only did so three (3) days after the deadline on 16th October 2013. Grant of administration was issued to Shahira and Nazir Hussein Sevany on 26th March 2014 with the latter resigning and renouncing his position on 2nd February 2015. Eight (8) days later, on 10th February 2015, the proceedings in Succession Cause No. 2660 of 2013 were stayed in Succession Cause No. 1793 of 2000. This stay was vacated on 13th October 2016.

31. In the meantime, and before stay was lifted, the administrators to the estate of the deceased filed an application dated 19th September 2016 in the main suit for substitution but then withdrew it on 30th March 2017 on the explanation that it was wrongly filed while the stay still subsisted. Confirmation of Grant was issued on 7th December 2016 after which the administrator pursued the revival and substitution by filing a notice of motion dated 31st March 2017 on 6th April 2017.

32. In allowing the application, the learned trial judge said:-

> 43. "Based on the above analysis of the reasons advanced for the delay in filing this application the only valid explanation I find, is that, there was a stay of proceedings in Succession Cause No. 2660 of 2013, which prevented the legal administrators of the estate of the Plaintiff, from taking any action in relation to the filing of this application. The stay order was thus beyond the applicant's control. Even then, I note that this stay issued on 10th February 2015, was lifted on 13th October 2016. The current application was initially filed on 31st March 2017, which is a period of about five months after the stay order was lifted."

33. In their submissions before us, counsel for the appellants argues that the main suit had not been stayed as the stay order solely targeted the probate proceedings and therefore the legal representatives of the deceased plaintiff were not prohibited from pursing the prosecution of the main suit. In addition, the legal representatives had the option of seeking a limited grant ad colligenda bona as they awaited issuance of a full grant of letters to enable them prosecute the main suit but did not.

34. It was also contended that no credible explanation was given why the application for substitution was not filed between 13th October 2012 (when the plaintiff died) and 13th October 2013 (when the main suit abated). Equally no explanation was given why the respondents failed to file the applications for revival and substitution between 13th October 2016 (when the stay order was vacated) and 31st March 2017. That despite that delay, the court still held that the presence of stay of proceedings in the probate suit constituted sufficient cause.

35. The respondents' counsel simply beseeched us to uphold the decision of the trial court.

36. We have reflected on the matter and note that the trial court was alive to the fact that the petition for grant of administration was made on 16th October 2013 which was about 3 days after the suit had abated. Although the trial court did not discuss this aspect, given the speed of disposal of cases in our courts, we do not think it to be unreasonable delay for the probate court issued grant of letters of administration on 26th March 2014, about five months after filing.

37. There is an unexplained inaction between issue of the grant on 26th March 2014 and 2nd February 2015 when one of the co- administrators resigned. This would be delay of about eleven months. We shall return to this.

38. While it is true that the stay issued on 16th February 2015 was not in respect of the main suit, it stayed further proceedings in the probate matter and confirmation of grant could obviously not be pursued. We also think that in view of the stay, it was not feasible for the respondents to pursue limited grant ad colligenda bona as that could have been viewed as a cynical or disingenuous way of going round the order of stay. Without either of the two, the respondents could not seek revival and substitution.

39. Stay was lifted on 13th October 2016 and on 7th December 2016, the grant was confirmed. That period, about 50 days, cannot be said to be unreasonable.

40. Having jumped the gun and filed the relevant application in the main suit on 19th September 2016, the respondent had to withdraw it and filed a proper one on 6th April 2017. This was about five (5) months after confirmation.

41. What this analysis demonstrates is that the unexplained delays would be: filing of a grant three (3) days after the suit abated; a delay of eleven (11) months when the two co-administrators could have applied for confirmation or limited letters and five (5) months between confirmation and the time the

application for revival was filed for a second time. While those periods, taken together, may be lengthy, the major delay was caused by the order of stay which lasted from 10th February 2015 to 13th October 2016, a period of eighteen (18) months. Another judge, or even this Court, could possibly have held that, notwithstanding the understandable delay during the period of stay, the overall lateness was not sufficiently explained because of the unexplained delays which we have cited. Other judges, and the learned trial judge fell in this category, would exercise the judicial discretion in favour of the applicants because the substantial lateness was caused by the stay which was well explained. The principle is that we are not entitled to interfere with exercise of discretion by the trial court merely because we would have reached a different conclusion had we been tasked with the exercise of discretion in the matter. For this reason we cannot, in good conscience, hold that the learned trial judge either misdirected herself on the law or misapprehended the facts or took into account matters she should not or failed to take into account matters she should have or the decision was plainly wrong or perverse. Simply put, we find no reason to fault the learned trial judge's finding that there was sufficient cause that prevented the respondents from making the application timeously.

42. The law is that even where a legal representative of a deceased plaintiff has demonstrated sufficient cause that prevented the filing of the application on time, revival of an abated suit will be declined if to allow it would cause immense prejudice to the defendant. When the appellants argued that they would suffer such prejudice, the learned trial judge answered thus:-

> "I have considered the arguments on the probable prejudice the respondents will suffer if the application is allowed and in my considered opinion the same are valid just as the response thereto is. However, I find that the same can be considered at the hearing of the suit and in the final determination of the matter. I will leave it at that. Any prejudice that may be suffered can be compensated in damages. The spirit herein calls for hearing the matter on merit than shut out the applicants."

43. We do not agree. We have no doubt that the time to weigh whether or not the defendant will suffer immense prejudice is at the point of considering the application for revival. To leave this important issue to trial after reviving the suit presents obvious difficulties. Immense prejudice may include the inability of the defendant to mount an effective defence because of fading memories of witnesses, death of witnesses or difficulty in availing them, destruction of documentary evidence or inability to find that evidence. This list can go on and on. To allow an abated suit to be revived when the defendant's ability to defend the matter has been severely hampered or diminished or neutered is to hand an easy victory to the plaintiff. It would be too late to protect such a defendant if the matter were to be left for trial.

44. In this matter, the appellants alleged that revival was bound to occasion a miscarriage of justice to their detriment because crucial witnesses had left the firm and the partners of the firm were of an advanced age and fading memory and further, the suit was personal to the plaintiff and so there would be no avenue to test the veracity of the various allegations by the deceased plaintiff through cross-examination.

45. Having made those assertions, it was incumbent upon the appellants to back them with some evidence. We are unable to find any evidence and so those fears do not seem to be well grounded. For that reason, we agree with the respondents that the supposed prejudice or miscarriage of justice was not proved or established by the appellants. And we need to add that if assertions of prejudice were to be accepted without some proof, then there would be no easier way of defeating an application for revival of an abated suit.

46. Ultimately, the entire appeal must fail and it is dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER 2024.

K. M'INOTI

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JUDGE OF APPEAL

MUMBI NGUGI

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR