



**Kairie v Karia Farmers Co-operative Society Ltd & another; Kitashori (The Legal Representative of the Estate of Godfrey Kahiu Karanja) (Applicant) (Environment & Land Case 81 of 2019) [2024] KEELC 1294 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1294 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 81 OF 2019**

**A OMBWAYO, J  
MARCH 7, 2024**

**BETWEEN**

**LEAH NYAMBURA KAIRIE ..... PLAINTIFF**

**AND**

**KARIA FARMERS CO-OPERATIVE SOCIETY LTD ..... 1<sup>ST</sup> DEFENDANT**

**GODFREY KAHIU KARANJA ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**PETER SANKALE KITASHORI (THE LEGAL REPRESENTATIVE OF THE ESTATE OF GODFREY KAHIU KARANJA) ..... APPLICANT**

**RULING**

1. The application before this court is dated 9<sup>th</sup> January 2024. It seeks orders that this Honorable Court does strike out the Plaintiff's/ Respondent's suit for instituting a suit as against a non-existent entity the 1<sup>st</sup> Defendant/ Respondent. This Honorable Court to mark the case against the 2<sup>nd</sup> Defendant/ Respondent as having abated. The Costs of this suit be provided for. The application is based on grounds that the 1<sup>st</sup> Defendant/ Respondent has been liquidated hence it has since ceased to exist. The 1<sup>st</sup> Defendant/ Respondent having been liquidated it does not have the locus standi to sue or be sued.
2. The suit against the 2<sup>nd</sup> Defendant/Respondent has abated by virtue of Order 24 Rule 4(3) of the Civil Procedure Rules since the 2<sup>nd</sup> Defendant/ Respondent Godfrey Kahiu Karanja passed on 7<sup>th</sup> October 2019. The suit against the 2<sup>nd</sup> Defendant/ Respondent abated one year after his demise on 7<sup>th</sup> October 2019. The effect of an abated suit is that it ceases to exist in the eye of the law.
3. 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



2<sup>nd</sup> Defendant/ Respondent. Continuation of this suit shall amount to an abuse of the court process as it shall consume judicial time and resources. In the supporting affidavit of Peter Sankale Kitashori the grounds of opposition are reiterated. In the replying affidavit the plaintiff states that Peter Sankale Kitashori is already a party to the suit. The suit has not abated and is pending hearing on merit.

4. I have considered the application and the replying affidavit and do find that the 2<sup>nd</sup> defendant died on 7<sup>th</sup> October 2019. The suit abated on 7<sup>th</sup> October 2020. The application for substitution was made on 8<sup>th</sup> February 2023 and filed on 9<sup>th</sup> February 2023 approximately two and half years after the suit had abated. Order rule 24 Rules 1 to 4 of the Civil Procedure Rule 2010 provides for death and Bankruptcy of parties thus:-

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.

(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.”

4. Procedure in case of death of one of several defendants or of sole defendant [Order 24, rule 4]

1. Where one of 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.

2. Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

3. Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.

5. The import of the above is that upon the death of a sole defendant the suit abates as against the deceased defendant. I do find that the suit against the 2<sup>nd</sup> defendant has abated. It is clear that the 1<sup>st</sup> defendant was wound up and does not exist and therefore no suit can be entertained against the company. The application dated 9<sup>th</sup> January 2024 is allowed and the suit is hereby declared as having abated against the 2<sup>nd</sup> defendant, and is struck out against the 1<sup>st</sup> defendant. No orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 7<sup>TH</sup> DAY OF MARCH 2024.**

**A O OMBWAYO**

**JUDGE**

