



**Kulankash v Okeyo & another (Environment and Land Appeal
11 of 2020) [2024] KEELC 4421 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4421 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL 11 OF 2020
MN GICHERU, J
MAY 30, 2024**

BETWEEN

PHILIP KIRAPEI KULANKASH APPELLANT

AND

ODONGO MARK OKEYO 1ST RESPONDENT

THE REGISTRAR, KAJIADO 2ND RESPONDENT

*(Being an Appeal from the whole Judgment, Orders and Decree of Hon. M. Kasera
issued in CMCC No. 5050 of 2017 BETWEEN PHILIP KIRAPEI KULANKASH –
VERSUS- ODONGO MARK OKEYO issued on the 28th of May 2021 at Kajiado)*

RULING

1. This ruling is on the notice of motion dated 17/1/2023. The motion which is by the appellant's legal representative seeks to have her approached as a legal representative of the deceased in this case. The motion which is brought under Order 24 rules 4 and 5 and Order 51 rule 1 *Civil Procedure Rules* and Sections 1A, 1B and 3A of the *Civil Procedure Act* is based on three (3) grounds and is supported by an affidavit of the applicant which has two (2) annexures.
2. The motion is opposed by the respondent who has filed a replying affidavit dated 28/4/2023 in which he replies as follows.

Firstly, the suit was abated since it is more than a year since the deceased died, having died on 16/10/2021 and the motion having been filed more than 1 year and 3 months later.

Secondly, the applicant was required to file an application for grant ad litem within a year and the applicant is now out of time.

Thirdly, the applicant has not explained by giving reasons as to why she had to file this motion out of time.



For the above and other reasons, the respondent urges that the motion be dismissed.

3. Counsel for the parties were to file written submissions by 31/3/2024 but I did not see any such submissions.

I have carefully considered the motion in its entirety including the grounds, and the affidavits by both sides and I find that it is fair and just to allow it for the following reasons.

Firstly, this is a suit that concerns land and it is fair that it be heard on merit so that the parties set substantial justice.

Secondly, the court has unfettered discretion under the proviso to Order 24 rule 3(2) [Civil Procedure Rules](#) to extend the time.

Thirdly, even though the applicant did not give any reasons for the delay, the delay is only by three (3) months which is not inordinate.

Finally, the respondent will not suffer any prejudice because the land, being immovable property will be available at the end of this litigation.

For the above stated reasons, I allow the motion dated 17/1/2023. Costs in the cause.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 30TH DAY OF MAY 2024.

M.N. GICHERU

JUDGE

