



**Kulankash v Okeyo & another (Environment and Land Appeal
11 of 2020) [2024] KEELC 4587 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4587 (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) IN REPUBLIC OF KENYA CHIEF MAGISTRATES COURT AT KAJIADO /CIVIL CASE NO. 505 OF 2017)

RULING

1. This ruling is on the notice of motion dated 19/1/2023. The motion which is by the appellant seeks two orders.
 - a. That the court be pleased to revive this suit which has abated by operation of the law.
 - b. That the costs of this application be in the cause.
2. The motion which is under Orders 24 Rule 7 (2) and 51 Rule 1 Civil Procedure Rules and Sections 1A, 1B and 3A of the *Civil Procedure Act* is supported by an affidavit by the applicant and is based on four grounds. The applicant urges as follows.

Firstly, the appellant died on 16/10/2021.

Secondly, twelve months have lapsed since the deceased passed on and the suit has abated by operation of law.



Thirdly, it is for the above stated reasons that the applicant is seeking to revive the suit so that it can be heard to conclusion.

Finally, it is just and equitable in the circumstances to allow the motion.

3. The motion is opposed by the respondent who has sworn a replying affidavit dated 5/11/2023 in which he replies as follows.

Firstly, an application which seeks to extend time within which to revive a suit is not known in law.

Secondly, the motion is vexatious, scandalous and an abuse of the court process because it constitutes the third series of similar motions made and abandoned half way.

Thirdly, in an ongoing case all that one needs is to file a limited grant and litem.

Fourthly, it is the respondent who had to inform the court of the demise of the deceased otherwise the appeal would have proceeded as if nothing was amiss.

For the above and other reasons, the respondent seeks to have the motion dismissed. Counsel for the respondent filed written submissions dated 5/11/2023. No written submissions have been received from the counsel for the applicant.

4. I have carefully considered the motion in its entirety as well as the response by the respondent and the written submissions. I find the application surprising because there is no order made by this court to the effect that this suit has abated. Such an order could be made by the court on its own motion or by application by any of the parties. Officially therefore, the suit has not abated. I find that the application was not therefore necessary in the first place.

Secondly, the court would rather sustain a suit than strike it out. Striking out of pleadings is a very drastic move that should be used sparingly so that suits are heard on merit rather being dismissed on technicalities. I do agree with the respondents' counsel that the appellant has filed a plethora of applications which lie unprosecuted for long thereby delaying the quick conclusion of this suit. Be that as it may, I find it fair and just to order that the parties go ahead and file their final submissions in the appeal so that all these unnecessary delays do not hinder the earliest conclusion of this matter. Notice of motion dated 19/1/2023 declared superfluous and unnecessary .

It is so ordered.

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

M.N. GICHERU

JUDGE

