



**Elpa & 212 others v Majani Mingi Group of Companies Limited; Kenya
Plantation & Agricultural Workers Union & 3 others (Interested Parties)
(Petition 18 of 2019) [2025] KEELRC 380 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 380 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION 18 OF 2019
AN MWAURE, J
FEBRUARY 14, 2025**

BETWEEN

**EKIRU ELIGOI ELPA & 212 OTHERS & 212 OTHERS & 212
OTHERS PETITIONER**

AND

MAJANI MINGI GROUP OF COMPANIES LIMITED RESPONDENT

AND

**KENYA PLANTATION & AGRICULTURAL WORKERS
UNION INTERESTED PARTY**

**NATIONAL HOSPITAL INSURANCE FUND BOARD OF
MANAGEMENT INTERESTED PARTY**

**NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEES . INTERESTED
PARTY**

COMMISSIONER OF DOMESTIC TAXES INTERESTED PARTY

RULING

Introduction

1. The 6th and 11th Petitioners/Applicants filed a Notice of Motion dated 20th September, 2024 under certificate of urgency seeking orders that:
 1. Spent
 2. The Honourable Court be pleased to grant leave to the applicants: Mwanahawa Tekete Atulo for the estate of Joseph Atulo Abwabo (deceased) the 6th Petitioner herein and Julius Kariuki



Mukiria for the estate of Julius Mukiria Kamau (deceased) the 11th Petitioner herein to revive their claims in the Amended Amended Petition dated 20th May 2022 against the Respondent herein and time for the substitution be extended.

3. Upon the grant of prayer 2 above, that there be an order that Mwanahawa Tekete Atulo for the estate of Joseph Atulo Abwabo (deceased) and Julius Kariuki Mukiria for the estate of Julius Mukiria Kamau (deceased) are hereby granted leave to substitute Joseph Atulo Abwabo (deceased) and Julius Mukiria Kamau (deceased).
4. Upon substitution the applicants be granted leave to make such filings, amend the pleadings or such other filings to effect the substitution on the record.
5. Costs of this application be in the activities.

6th and 11th Petitioners/Applicants' case

2. The application is supported by the affidavit of Samwel Mitee Tuwee sworn on even date and a supplementary affidavit sworn on 29th November 2024.
3. The Applicants aver that both passed away on 13th September 2023 and 14th May 2022 respectively.
4. The Applicants aver that an application for letters of administration ad litem was done vide Nakuru High Court Succession Cause No. E137 of 2024 in the matter of the estate of Joseph Atulo Abwabo(deceased) and Nakuru High Court Succession Cause No. E138 of 2024 in the matter of the estate of Julius Mukiria Kamau(deceased) which were both granted.
5. The Applicants aver that the letters of administration ad litem were forwarded to the counsel on record on the 19th September 2024 via email for further action.
6. The 6th and 11th Petitioners/Applicants aver that the law allows the revival of an abated suit, thus the application is properly before this Honourable court.
7. The Applicants aver that the Respondent will not suffer any prejudice as the delay is not inordinate.
8. The Applicants aver they are ready and willing to participate in the matter and therefore in the interest of justice this Honourable allows the application as prayed.

Respondent's replying affidavit

9. In opposition to the application, the Respondent filed a replying affidavit dated 18th November 2024.
10. The Respondent avers that the suit by the 6th Petitioner/Applicant's suit abated one (1) year after his demise.
11. The Respondent avers that the letters of administration ad litem were furnished to the 6th and 11th Petitioners/Applicants counsel on 19th September 2024 amounting to delaying in filing the application before this Honourable Court.
12. The Respondent avers that the High Court would not have taken a whole year to issue letters of administration ad litem thus, the court should not be blamed for the Applicants' delay in filing the documents.
13. The Respondent avers that the Applicant was in possession of the death certificate in December 2023 and intentionally failed to disclose the delay in filing the application.



14. The Respondent avers that litigation comes to an end and the Applicants do not need to frustrate it through law.
15. The Respondent avers that the application is frivolous, an abuse of the court process, and unmerited therefore the application should be dismissed with costs.
16. The Interested parties did not put any responses to the application.
17. The application was canvassed by way of written submissions.

Applicants' submissions

18. The Applicants submitted that the delay in filing the application for abatement of the suit and revival on behalf of the 6th Petitioner was due to the court registry's delay in providing the letters of administration ad litem. In contrast, the delay for the 11th Petitioner stemmed from the fact that the death certificate was registered on 30th June 2022, but was not issued until 13th May 2024, which resulted in a timely move to the succession court.
19. The Applicants submitted that they were supplied with the letters of administration ad litem on 19th September 2024 and filed this present application on 20th September 2024.
20. The Applicants relied on the case of Said Sweilem Gheithan Saanum V Commissioner of Lands (being sued through Attorney General) & 5 others [2015] eKLR the Court of Appeal stated that when a plaintiff dies, the suit does not abate if the cause of action survives. Within one year of the plaintiff's death, or within an extended time by the court for "good reason," an application must be made to include the legal representative. If no application is made within this time, the suit abates, preventing any fresh suit on the same cause of action. The legal representative can apply to revive the abated suit by proving "sufficient cause" for the delay in continuing the suit.
21. In Cosmas Kanja Mbuteti (Deceased) and another V Jackson Murage and 3 others [2021] eKLR cited the Court of Appeal case of Attorney General V Law Society of Kenya & another [2013] eKLR which explained sufficient cause as follows:

“Sufficient cause or good cause in law means: -

The burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused. See Black's Law Dictionary, 9th Edition, page 251. Sufficient cause must therefore be rational, and plausible. Logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubt in a Judge's mind. The explanation should not leave unexplained gaps in the sequence of events.”

22. In Joseph Gachuhi Muthanji V Mary Wambui Njunguna [2014] eKLR where the Court of Appeal noted that the delay of filing the application for substitution from the date of the 2nd Plaintiff's death to 7th July 2004 could be attributed to the delay in obtaining letters of administration.
23. The Applicants submitted that in the interest of justice, the application should be allowed as prayed for parties to ventilate their respective positions in the Amended petition and relied on the case of Richard Nchapi Leiyagu V Independent Electoral Boundaries Commission & 2 Others [2013] KEHC 3100 (KLR) where this court expressed itself as follows:

“.....The right to a hearing has always been a well-protected right in our Constitution and is also the cornerstone of the rule of law. This is why even if the courts have inherent



jurisdiction to dismiss suits, this should be done in circumstances that protect the integrity of the court process from abuse from that would amount to injustice and at the end of the day there should be proportionally...”

24. The Applicant urged this Honourable Court to allow the instant application as prayed.

Respondent’s submissions

25. The Respondent relied on Order 24 Rule 3 of the Civil Procedure Rules which outlines the procedure in case of death of one of several plaintiffs or of sole plaintiff as follows:

- “(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.”

26. Order 24 Rule 7 of the Civil Procedure Rules provides for abatement or dismissal of suit as follows:

- “(1) 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.”

27. The Respondent submitted that the suit for the 6th and 11th petitioners have abated due to their passing away on 13th September 2023, and 4th May 2022, respectively. The application for revival and substitution was filed on 20th September 2024, which was more than one year after their deaths.

28. The Respondent argued that for a suit to be revived, there should be sufficient good reason and submitted that there was no sufficient reason given by reiterating the case of Attorney General V Law Society of Kenya & another (supra) in support of that proposition.

29. The Respondent submitted that the Applicants came to court with unclean hands, as no washing power and/or bar can remove the stains by their failure to file the petition in a timely manner and inability to avail the evidence to justify the delay. The Respondent relied on the case of Mohamed Guyo Boru V Richard Mwilaria Aritho [2022] eKLR, where the court stated that section 107 of the [Evidence Act](#) provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that this fact exists. Section 108 specifies that the burden of proof lies with the person who would lose the case if no evidence is presented. Section 109



clarifies that the burden of proof for any particular fact rests with the person who wants the court to believe it, unless the law assigns this burden to someone else.

30. In conclusion, the Respondent urged this Honourable court to dismiss the application with costs.

Analysis and determination

31. This court has considered the application, affidavits as well as the submissions on record and reckons the main issue for determination is whether the application is merited.
32. Order 24 Rules 3 and 7 of the Civil Procedure Rules have been reiterated in the preceding part of this ruling. In *Rebecca Mijide Mungole and Another V Kenya Power & Lighting Company Ltd and 2 Other* [2017] KECA 544 (KLR) where the Court of Appeal held that the procedure set out in Order 24 Rule 3 and 7 of the Civil Procedure Rules, is that if a plaintiff passes away and the cause of action survives or continues, the following rules apply. Generally speaking, if a sole plaintiff or the only surviving plaintiff dies and the cause of action survives or continues, the suit will automatically be abated unless an application is made within one year of the plaintiff's death.
33. In *Said Sweilem Gheithan Saanum V Commissioner of Lands (being sued through Attorney General) & 5 Others* (supra) the Court of the Appeal stated that there should be "good reason" and therefore an application must be made to include the legal representative. If no application is made within this time, the suit abates, preventing any fresh suit on the same cause of action. The legal representative can apply to revive the abated suit by proving "sufficient cause" for the delay in continuing the suit.
34. In this instant case, the Applicants acknowledged receipt of the letters of administration ad litem on 19th September 2024 and filed the present application on 20th September 2024. The court found the applicants did not explain to the court their reason for the delay in obtaining the letter of administration ad litem. However on receiving the same in September 2024 they filed this application immediately. The court finds for justice to be served to all especially in such unfortunate circumstances where the Petitioners are deceased the court will extend justice to the deceased family and allow the substitution of Petitioners numbers 6th and 11th be granted their prayers in the Notice of motion dated 20th September 2024 and in particular allow prayers 2,3 and 4. The court has also observed the suit has not been heard either partially or fully. It is fair to allow the two Petitioners to be allowed in the suit.
35. The Petitioners 6 and 11 to file their amended petition within 14 days and mention the case on 5th March 2025 for further directions.
36. Costs will be in the cause.

Order accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14TH DAY OF FEBRUARY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article



159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

