



REPUBLIC OF KENYA



**Geogladys Holdings Limited v Koinange & 3 others (Environment & Land
Case 848 of 2003) [2024] KEELC 5668 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5668 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 848 OF 2003**

**LN MBUGUA, J
JULY 25, 2024**

BETWEEN

GEOGLADYS HOLDINGS LIMITED PLAINTIFF

AND

PAUL KOINANGE 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

GK WARUHIU 3RD DEFENDANT

WARUHIU, K'OWADE & NGANGA ADVOCATES 4TH DEFENDANT

RULING

1. Before me is the plaintiff's Application dated 24.11.2023, seeking order for the revival of the suit. The application is premised on the supporting affidavit of one George M Muriithi dated 24th of November 2023. He identifies himself as a director of the plaintiff. He contends that in the year 2022, It was brought to the courts notice by the advocates for the first defendant that their client (1st defendant) had passed on, and that the deceased family was seeking out to get letters of administration to enable them to proceed with the matter.
2. That in June 2023, it was reported to the court that the family was anxious in settling the matter. But on 11th October 2023, the case against the 1st defendant was marked as abated, the said party having passed on 31.3.2021, and the court scheduled the matter for hearing on 6th of May 2024, marking it as a last adjournment against the plaintiff.
3. The plaintiff contends that it was served with the grant in the succession case number E 124 of 2022 only after the last court appearance.
4. The deponent avers that since the legal representatives of the estate of the deceased has been identified, then it is necessary that the suit be revived against him.



5. The application is opposed by the third party through their grounds of opposition dated 2.1.2024. They contend that the application is defective and incompetent, in that no prayer for extension was sought. As such, the legal representatives of the first defendant have no locus and cannot be made parties to these proceedings.
6. The 2nd defendant does not oppose the application.
7. I have considered all the issues raised here including the submissions of the third party. The legal regime governing abatement of suits is to be found at Order 24 rule 4 (4) of the Civil Procedure Rules which provides as follows that;

“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...”
8. The provisions of sub rule 7 thereof stipulate that the plaintiff may apply for revival of the suit where the said suit has abated by proffering sufficient reasons showing that it was prevented from continuing with the suit.
9. The third party has not rebutted the averment made by the plaintiffs that they only got the grant after the last court appearance. Further, the records indicate that the advocates for the deceased had encountered challenges in their quest to have the deceased substituted (see proceedings of 20.4.2023). To this end, I am inclined to find that the plaintiff has proffered sufficient reasons as to why they could not apply for substitution in good time.
11. The line of submissions of the third party, including the authorities proffered are hinged on the provisions of Order 24 rule 3 (2). However, the compliance with the extension of time under the aforementioned rule relates to the death of a plaintiff; See Said Sweilem Gbeithan Saanum v Commissioner of Lands (being sued through Attorney General) & 5 others [2015] eKLR.
12. The person who has died in the instant suit is the 1st defendant. However, even if it was the other way round, this court would still have looked at the bigger picture of interrogating the justice of the matter. In the case of Mbaya Nzulwa v Kenya Power & Lighting Co. Ltd [2018] eKLR the court stated thus;

“I invite the intrinsic power of the court to administer justice devoid of technicalities as well as the overriding objective of the court and understand the applicant to plead that the suit be heard on the merits.
13. Similarly, I find that the justice of the matter dictates that this suit should be heard on merits. Thus the application dated 24.11.2023 is hereby allowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Gachuna holding brief for Susan Kahoya for Plaintiff/Applicant



Allan Kamau for Attorney General

Muriithi holding brief for Thangei for 3rd Party

Court assistant: Eddel

