



**Kungu v Kinuthia & another (Environment and Land Case Civil Suit
244 of 2017) [2024] KEELC 5662 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5662 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 244 OF 2017**

LN MBUGUA, J

JULY 18, 2024

BETWEEN

MARY WAHITO KUNGU APPLICANT

AND

JOHN KIRAKI KUNGU KINUTHIA 1ST RESPONDENT

BENARD KINUTHIA KUNGU 2ND RESPONDENT

RULING

1. Before me is the plaintiff's Notice of Motion application dated 14.4.2022 seeking orders for the revival of the suit against the second respondent, Bernard Kinuthia Kungu and that the said party be substituted with Joseph Kangethe. The application is premised on the grounds set out on the face of the application and the supporting affidavit of the applicant, Mary Wahito Kungu.
2. She avers that her brother who is the 2nd respondent passed away on 29.2.2020 and his survivors declined to get letters of administration. She therefore filed the succession case No. 1022 of 2022 in the High Court to have one Joseph Kangethe to be nominated as the legal representative of the deceased of which she was issued with a grant on 20.9.2021.
3. The respondent John Kiraki Kungu opposed the application vide his replying affidavit dated 1.12.2023. He contends that the 2nd respondent passed away on 29.2.2020, and that the applicant only petitioned for the grant 7 months later, and that the applicant thereafter took more than a year to file the current application.
4. I have considered the application the response filed thereof and the submissions. I discern that the 2nd respondent died on 29.2.2020. Thus in terms of the provisions of Order 24 rule 4 (3) of the *Civil Procedure Rules*, the suit had abated against the said defendant. However, such a suit can be revived in terms of the provisions of Order 24 rule 7(2). The question falling for determination is whether



the applicant has demonstrated sufficient cause to warrant the revival of the suit and the substitution thereof.

5. In *Gladys Njeri Mubura v Daniel Kariuki Muthiguro* [2018] eKLR, the court stated thus;

“Under Order 24 Rule 3 (2) there must be an application for revival of the suit after abatement before substitution. An order for substitution before revival of the suit is a nullity. See the case of Kenya Farmers Coop Union Limited v Charles Murgor (deceased) t/ a Kiptabei Coffee Estate [2005] eKLR. It is on record that the Plaintiff gave reasons for the delay in substituting the defendant; that the family were evasive or uncooperative in filing the necessary succession cause for legal representation of the deceased, forcing the plaintiff to proceed under the relevant provisions of the Succession Act by citing the son Daniel Kariuki Muthigiro as a legal representative.”

6. Similarly, in the instant case, the plaintiff has given a plausible account of why she delayed in substituting the deceased, that his family members were evasive and uncooperative, and this is well captured in the documents filed in the succession cause. I therefore find that the application dated 14.4.2022 is merited, the same is hereby allowed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Odhiambo holding brief for Mbuthia Kinyanjui for 1st Respondent

M/s Nekoye holding brief for Mwariri for Applicant

Court assistant: Eddel

