



REPUBLIC OF KENYA



KENYA LAW
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**Lagat v Rotich (Environment & Land Case 220 of 2014)
[2024] KEELC 5302 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5302 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 220 OF 2014**

EO OBAGA, J

JULY 18, 2024

BETWEEN

EVERLYNE JEPTABUT LAGAT PLAINTIFF

AND

DINA JEPNGETICH ROTICH DEFENDANT

RULING

Introduction

1. This is a ruling in respect of a Notice of Motion dated 14th December, 2023 in which the Plaintiff/Applicant seeks the following orders:-
 - a. Spent
 - b. Spent
 - c. That an order of injunction do issue restraining the proposed Defendants/Respondents by themselves, their servants, contractors or agents from constructing, putting up a fence, construction thereon, transferring, alienating, trespassing onto, subdividing, taking possession or in any way interfering with the Plaintiff/Applicant parcel of land known as Uasin Gishu/ Kuinet B Scheme/36 pending the hearing and determination of this suit.
 - d. That the officer commanding Kuinet Police station to enforce the court order issued herein.
 - e. That the suit as against the deceased defendant be revived/reinstated and/or be reopened for the purposes of hearing and determination on merit.
 - f. That upon revival and /or reopening of the suit time be extended and leave be granted to the plaintiff to substitute the deceased defendant with the proposed Respondents herein.
 - g. Costs be provided for and in any event be borne by the Defendant/Respondents.



Background:

2. The Plaintiff filed this suit against the Defendant seeking among other prayers a declaration that the Defendant was a trespasser on LR. No. Uasin Gishu/Kuinet “B” Scheme/36 as well as an order of eviction. The Defendant filed a defence and raised a counter claim in which she sought for a declaration that the suit property belonged to her and that the Plaintiff’s suit ought to be dismissed and title to the suit property transferred to her.
3. The Plaintiff testified on 12th June, 2017 and the case was adjourned to 21st September, 2017 for further hearing. The Plaintiff was thereafter unable to call any more witnesses. She closed her case on 22nd January, 2018. Defence hearing could not take office until the Defendant passed on. On 17th August, 2022. There was no substitution done on the part of the Deceased Defendant. The suit against the Defendant as well as her counter-claim abated on 16th August, 2023.
4. On 3rd July, 2023 the court deemed the Defendant’s case as closed and directed that parties file written submissions. On 12th October, 2023, the court delivered a brief judgment where it was held that there was nothing to write judgment on as both the Plaintiff’s suit as well as the Defendant’s counter-claim had abated.
5. Notwithstanding the court’s observation *vide* judgment of 12th October, 2023, the Plaintiff/Applicant filed the current application.

Applicant’s Application:

6. The Applicant sought to bring on board two proposed Respondents whom she alleges are sons of the Deceased Defendant. She contends that they have interfered with the suit property and hence the need to injunct them from further interference.
7. The Applicant therefore seeks revival of the abated suit so that the proposed Respondents can be sued in place of their Deceased mother.

Response by the Proposed Respondents:

8. The Applicant’s Application was opposed by the Proposed Respondents through a Replying Affidavit by the 2nd Proposed Respondent sworn on 2nd February, 2024. The Respondents stated that they cannot be sued before they are brought in as administrators of the Deceased defendant. They contend that the 1st proposed Respondent is not a son of the deceased but is only a relative and that he does not reside on the suit property.

Analysis and determination:

9. Though parties were directed to file written submissions, there is no party who filed written submissions. I have considered the applicant’s application as well as the opposition thereto by the Respondents. The only issue for determination is whether the Applicant can revive a suit where there are no administrators of the estate of the deceased defendant.
10. The law is clear that revival of an abated suit can only be allowed where the court is satisfied as to the reasons why there was no substitution within one year from the demise of the deceased. In the instant case, there is no one who has taken out letters of administration in respect of the estate of the deceased defendant. The proposed defendants are not yet the administrators of the estate of the deceased. I find that this application is incompetent. The same is struck out with costs to the proposed Respondents.



It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH DAY OF JULY, 2024.

E. O. OBAGA

JUDGE

In the virtual absence of parties who were aware of the date of ruling.

Court Assistant –Laban

E. O. OBAGA

JUDGE

18TH JULY, 2024

