



REPUBLIC OF KENYA



Reuben v Maweu (Sued as the legal representative of the Estate of Joseph Maweu Nguka – Deceased) & another (Environment & Land Case 56 of 2006) [2024] KEELC 6276 (KLR) (25 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6276 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 56 OF 2006
A NYUKURI, J
SEPTEMBER 25, 2024**

BETWEEN

EVA KATULA REUBEN PLAINTIFF

AND

**ELIZABETH KALUKI MAWEU (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOSEPH MAWEU NGUKA – DECEASED) 1ST DEFENDANT
LUKENYA RANCHING & FARMING COOPERATIVE SOCIETY LIMITED 2ND DEFENDANT**

RULING

Introduction

1. Before court is a chamber summons application dated 28th February 2023 filed by one Erric Kyalo Reuben seeking the following orders;
 - a. That this Honourable Court do issue an order to revive the suit as against the 1st defendant who is since deceased and the 2nd defendant.
 - b. That Erric Kyalo Reuben be and is hereby appointed and substituted as the legal representative of his late Eva Katula Reuben (deceased) and who is the plaintiff herein.
 - c. Spent.
 - d. That an order of injunction be issued restraining the defendants from selling, sub dividing, transferring, charging or any other dealing with land parcel No. Mavoko Town Block 3/2862 pending the hearing and determination of the suit upon revival.



- e. That upon granting of prayers (a) and (b) above, the plaintiff be granted leave to amend his plaint as per the annexed proposed further amended plaint.
 - f. That the annexed proposed further amended plaint be deemed properly filed and served upon payment of the requisite court fees.
 - g. That costs of this application be provided for.
2. The application is supported by the affidavits sworn by Erric Kyalo Reuben on 28th February 2023 and 30th January 2024. The applicant's case is that the plaintiff passed away some years back but the family was not aware of this suit and that there is need to substitute the deceased plaintiff with her son and legal representative Erric Kyalo Reuben. He further stated that when the plaintiff Eva Katula Reuben died, her son Simon Katula Reuben made an application dated 16th March 2021 seeking to have the suit revived but that Simon who was suffering from an enhancing mass on his left frontal intracerebral which had hindered his mobility, also passed on.
 3. It was the applicant's averment that the family instructed their advocate to petition for grant of letters of administration where he is named as the legal representative and that he intends to be substituted as the plaintiff in this matter. He also stated that the proposed defendants should be joined to this suit as they are the current registered owners of the parcel of land known as Mavoko Town Block 3/2862. Further that he intends to amend the plaint to include the proposed defendants. He maintained that no prejudice will be suffered by the defendant. He attached a copy of application dated 16th March 2021 by the late Simon Katula Reuben; copy of the medical report of the late Simon Katula Reuben; the latter's death certificate; petition of letters of administration ad litem by the applicant; official search certificate for Mavoko Town Block 3/2862 and a draft amended plaint.
 4. When the court noted that there was no death certificate for the late Eva Katula Reuben, on 18th December 2023, in the interests of justice the court granted the applicant leave to file supplementary affidavit in 7 days and ensure that the death certificate of the deceased plaintiff is attached.
 5. On 20th January 2024, the applicant filed a further affidavit sworn on 30th January 2024. He attached the death certificate of Simon Katula Reuben and not that of the late Eva Katula Reuben.
 6. The application was opposed. Elizabeth Kaluki Maweu filed a replying affidavit sworn on 29th May 2024 opposing the application. She stated that the application is incapable of being granted as an application for substitution upon death of a party, ought to be made within one year, which was not done in this case as the plaintiff died on 28th July 2014 and that the suit was marked as having abated on 30th October 2017.
 7. She averred that the suit property formed part of the estate of the late Joseph Maweu Nguka and was distributed by the High Court. She stated that the application filed by Simon Katula Reuben for substitution was not prosecuted as Simon died on 20th July 2021 and on 28th February 2022 the suit was again marked as abated and the file closed. She argued that the suit having abated, the orders sought cannot be granted. Further that the applicant was inviting the court to sit on appeal of its orders.
 8. The respondent also stated that in the attached application for grant of letters of administration ad litem, the applicant is not named as the proposed administrator and that the applicant has not produced the grant of letters of administration despite petitioning for the same on 6th June 2022. She was of the view that equity aids the vigilant and that the applicant has been indolent. She maintained that there was no justifiable reason for the delay given by the applicant. She attached the order of this



court dated 30th October 2017; a certificate of confirmation in Machakos Succession Cause No. 137 of 2011; application dated 16th March 2021 and the order of this court made on 28th February 2022.

9. The application was canvassed by way of written submissions. On record are the applicant's submissions filed on 14th June 2023 and the 1st respondent's submissions filed on 29th September 2023 which the court has duly considered.

Analysis and determination

10. The court has carefully considered the application, the response thereto and parties' rival submissions. The issues that arise for determination are;

- a. Whether the applicant has provided good reason for revival of the abated suit herein.
- b. Whether the court should allow amendment of the plaint.
- c. Whether the applicant deserves orders of temporary injunction.

11. Order 24 Rule 3 of the Civil Procedure Rules allows extension of time where substitution was not applied for within one year of the death of a plaintiff. That provision states as follows;

Procedure in case of death of one of several plaintiffs' or of sole plaintiff.

3. (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.

12. Therefore where there is good reason, the court may extend time to have the legal representative of a deceased plaintiff be made a party in a suit that has abated, where the cause of action survives the plaintiff's death.
13. In this case, despite the court granting the applicant more time to file supplementary affidavit to avail the death certificate of Eva Katula Reuben, the applicant failed to file the same and kept filing the death certificate of Simon Katula Reuben yet Simon is not the deceased plaintiff in this case. Even the application which was filed on behalf of the late Simon Katula Reuben seeking his substitution of Eva Katula Reuben, did not have any annexure of the death certificate of Eva Katula Reuben. Although the petition for grant of letters of administration filed by the applicant herein in Machakos CMCC Succession Cause No. 86 of 2022 the applicant indicated that Eva Katula Reuben died on 28th July 2014, there is no death certificate to confirm the same and or to confirm the death of Eva Katula Reuben and when she died.
14. To make matters worse, the applicant has not attached a grant of letters of administration made in his favour in regard to the Estate of Eva Katula Reuben and therefore he lacks capacity to be substituted in the place of Eva Katula Reuben. Order 24 Rule (3) (1) only allows substitution to be done in favour of a legal representative of the deceased plaintiff. As the applicant has not proved that he is the legal representative of the alleged deceased Eva Katula Reuben, he lacks the necessary capacity and or locus standi to represent the alleged deceased plaintiff.



15. Since the applicant lacks capacity to seek substitution, he also has no capacity to seek revival of the suit; or amendment of the plaint or injunction.
16. In the premises, I find no merit in the application dated 28th February 2023 and I hereby dismiss the same with costs to the respondent/1st defendant.
17. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 25TH DAY OF SEPTEMBER, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Mr. Mundia for 1st respondent

Ms. Musau for applicant

No appearance for the 2nd respondent

Court assistant – Abdisalam

