



**Busienei & 29 others v Kipkeibon Estate Ltd (Environment & Land Case
22 of 2022) [2024] KEELC 7270 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7270 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 22 OF 2022**

**MN MWANYALE, J
OCTOBER 31, 2024**

BETWEEN

FRANCIS K BUSIENE & 29 OTHERS & 29 OTHERS PLAINTIFF

AND

KIPKEIBON ESTATE LTD DEFENDANT

RULING

1. This Ruling is in relation to two applications one is dated 14/11/2017 and the other one is dated 8/10/2018.
2. The Court directed the simultaneous hearing of the applications as the reliefs they seek are intertwined. Whereas in the Motion dated 14/11/2017 seeks to declare the suit by some Plaintiffs as having abated, the second Motion dated 8/10/2018 seeks to substitute the deceased Plaintiffs.
3. This suit was originally filed as Eldoret ELC No. 33/2016 before transfer to this Court after its establishment.
4. A total of 31 Plaintiffs filed the suit against the Defendant. 7 of the Original Plaintiffs namely Christina Jerotich, Barnaba Bungei, Senge. Yego Sawe Busa, Kipkemboi Rono, Chebusio Chemaget and Joseph K. Tarus passed on during the pendency of this suit.
5. The first application seeks to have the suit by the said deceased Plaintiffs declared as having abated. This application although filed in first in time in 2017 has not been heard and determined.
6. The 2nd Application seeks to substitute the said deceased Plaintiffs with their legal representatives. This application was filed in 2018 and has equally not been heard and is subject of this ruling.
7. During the pendency of the two applications, the remaining Plaintiffs engaged with the Defendant through the Court Annexed Mediation whereof two partial settlement agreements were recorded, on the 12 day of September 2019 and adopted by the Court on 7/10/2019.



8. In the meantime, the two applications were in abeyance till the directions to hear them simultaneously.
9. Turning to the present applications the first application is made under Order 24 Rule 3 (2) and Order 51 (i) of the Civil Procedure and on the grounds that it is more than one year (since) the named Plaintiffs have passed on yet no substitution had been undertaken, hence the need to have the deceased's suits be formally marked as having abated.
10. In the Supporting Affidavit the Applicant has annexed death certificates in respect of Chebusio Chemaget, Kipkemboi Ronon, as well as a letter dated 28/12/2015 from Assistant chief Tartar Sub Location indicating a list of deceased persons from the area who were still registered voters.
11. In the 2nd application, seeks for leave to substitute Kipkemboi Rono with Joseph Kipchumba Bett, Chebusio Chemaget with Andrea Kipserem Rop, Cristina Jerotich with Philemon Kipkgei Miayo Nengo, Barnaba Bungei with Cherotich Bungei and John Kipchumba Rop, Joseph Tarus with Gilbert Kiptum Songok, Senge C. Yego with Bernard Kiptanui Bett.
12. The grounds in support of the application being that the Plaintiff are now deceased and the proposed Plaintiffs are the Administrators of their respective Estates.
13. Grants of Letters of Administration Ad Litem in respect of these Applicants were annexed in the supporting affidavits.
14. In support of the first application Mr. Kosgey Learned Counsel for the Defendant/Applicant submits placing reliance on Order 24 Rule 3 that where no application for substitution I made, the suit abates. He further places reliance in the decisions in the case of Titus Kiragu vs Jackson Mugo Mathai and another HCCC 1616 of 1985, as well as Kenya Farmers' Co-operative Union Limited vs Charles Murgor t/a Kaptabei Coffee Estate.
15. The Plaintiff/Applicant Advocate further relied on these same submissions in seeking the dismissal of the application dated 8/10/2018 as granting substitution in a matter whose cause of action rested by operation of law is tantamount to a nullity.
16. On his part, Mr. Bitok Sambu for the Plaintiffs/Respondent combined his submissions in respect of the two applications.
17. It was his submission that in view of the two partial settlements the suit was technically concluded and that the applications have been overtaken by events.
18. It is his further submissions and concession that the only remaining issue was the issue of costs and execution of the settlement's agreement as decree of the Court and further that in accordance with Order 24 Rule 2 there was no need to substitute.
19. The submission and concession by Mr. Bitok Sambu on the fact that there is no need to substitute essentially disposes off the application dated 8/10/2018 which is hereby dismissed, as the Applicant concede there is no need to substitute.
20. In respect of the application dated 17/11/2017, it is important for good order to have the deceased case declared as having abated especially so in view of that fact that the settlement agreements reached in 2019 were reached without the participation of the deceased Plaintiffs and/or their representatives, and they cannot claim any benefits and/or interest arising out of the settlement agreements.
21. Accordingly, it is hereby declared that all the deceased Plaintiffs suit as captured both in the application dated 17/11/2017 and in the partial settlement agreement, dated 12/09/2019, have abated. And the application dated 17/11/2017 is hereby allowed.



22. Costs shall be in the cause.

RULING DELIVERED AND DATED AT KAPSABET THIS 31ST DAY OF OCTOBER, 2024.

HON. M. N. MWANYALE,

JUDGE

In the presence of;

1. Mr. Kosgey for the Defendant
2. Mr. Sambu for the Plaintiffs

