



Ngala (Suing as Administrators of the Late Mumba Chome Ngala - Deceased) v County Government of Kilifi & 2 others; Lewa & 13 others & 2 others (Interested Parties) (Environment & Land Case 243 of 2014) [2025] KEELC 557 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELC 557 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 243 OF 2014
FM NJOROGE, J
FEBRUARY 13, 2025
(FORMERLY MOMBASA ELC NO. 95 OF 2011)**

BETWEEN

**TSANGWA CHOME NGALA PLAINTIFF
SUING AS ADMINISTRATORS OF THE LATE MUMBA CHOME NGALA -
DECEASED**

AND

**COUNTY GOVERNMENT OF KILIFI 1ST DEFENDANT
KETRACO COMPANY LIMITED 2ND DEFENDANT
MWABEJA, MWAMUDU & MWAKAI CLANS 3RD DEFENDANT**

AND

**KATEMBE NZEMBE LEWA & 13 OTHERS INTERESTED PARTY
THE ATTORNEY GENERAL INTERESTED PARTY
THE NATIONAL LAND COMMISSION INTERESTED PARTY**

RULING

1. The application dated 15th March, 2024 seeks the following orders:
 - a.Spent;
 - b. An order substituting the deceased Plaintiff, Tsangwa Ngala Chome with Hastings Tsangwa Ngala, Mumba Tsangwa Ngala and Kilelo Tsangwa Ngala as the Plaintiffs;
 - c.Spent;



- d.Spent;
 - e. That this court do review, vary and or set aside the consent order dated 1st October, 2018;
 - f. That the costs of the application be provided for;
 - g. That the court do grant any other consequential order(s) as may be necessary in the wider interests of substantial justice.
2. The application is supported by an affidavit sworn on the even date. On 1st October, 2018 the parties entered into a consent to excise acres from the suit land known Kilifi/Madzimbani/Mitangoni/B/1 through a survey which excised part of the land be registered in favour of the 3rd Defendant. The consent order was adopted as an order of the Court on 1st October, 2018. Pursuant to that order, the parties herein on 15th April, 2024 recorded a consent at the Court of Appeal in Malindi Civil Appeal No. 127 of 2018 - County Government of Kilifi Vs. Hastings Tsangwa Ngala & Others to the extent that all people who live on the subject land being Kilifi/Madzimbani/Mitangoni/B/1 whether parties to this suit or not should go to the site on a date to be agreed upon and point out the portion of land they occupy. However, the plaintiff has now filed the present application to set aside the consent order recorded in the present case.
 3. The 3rd defendant is the lone voice among the defendants who is objecting to the application. I have found it necessary to inquire into the merits of the present application first in respect of the prayer for substitution.
 4. The applicants aver that they are the children of the late Tsangwa Ngala Chome who died on 13th June 2021 according to the limited grant exhibited in the application. The present application was filed on 18/3/2024.
 5. There are provisions that govern proceedings after the demise of a party. Order 24 rules (1), (2) and (3) CPR provide as follows:
 1. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues.
 2. Where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.
 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.”



6. The provisions of Section 2(1) of the *Law Reform Act* state as follows: -

- (1) Subject to the provisions of this section, on the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.”

7. The issue that comes to mind immediately upon sight of the grant and the date of demise thereon as well as the date of the filing of the present application is that present suit has abated. In *Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others* [2017] KECA 544 (KLR) it was held as follows:

Speaking generally, by operation of the law, a suit will automatically abate where a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues if no application is made within one year following his death.”

8. There is thus no suit. It should be first revived before any substantive order, including an order of substitution of the deceased with the administrators of his estate, can be made. No order of revival of the suit has been sought in the application. The first prayer is for substitution. In *Rebecca Mijide Mungole* (supra) the Court of Appeal stated as follows:

Where a suit abates, no fresh suit can be brought on the same cause of action because it is extinguished and cannot be maintained in the form it was originally presented. Because the suit will only abate where, within one year of the death of the plaintiff no application is made to cause the legal representative of the deceased plaintiff to be joined in the proceedings, it is imperative and we may add, logical, where the legal representative is not so joined within one year, that an application be made for extension of time to apply for joinder of the deceased plaintiff's legal representative. It is only after the time has been extended that the legal representative can have capacity to apply to be made a party. Order 24 must be construed by reading it as a whole and the sequence in which it is framed must be followed without short circuiting it. The proviso to rule 3(2) to the effect that the court may, for good reason on application, extend the time goes to show that without time being extended, no application for revival or joinder can be made. It is the effluxion of time that causes the suit to abate. It is that time that must, first be extended. Once time has been enlarged, only then can the legal representative bring an application to be joined in the proceedings. Again it is only after the legal representative has been joined as a party that he can apply for the revival of the action. In our view there is nothing objectionable to making an omnibus application for all the three prayers. But it is incompetent to seek joinder or revival when the prayer for more time to apply has not been granted.

9. None of the prayers can be granted without extension of time and revival of the suit. For that reason, the application dated 15/3/2024 is hereby struck out with costs.

RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 13TH DAY OF FEBRUARY 2025.

MWANGI NJOROGE

JUDGE, ELC MALINDI

