



Harun v Mugambi (Sued as the legal representative and administrator of the Estate of Mugambi Mburugu Alias Mugambi M'Mburugu- Deceased); Muthomi (Intended Respondent) (Environmental and Land Originating Summons 41 of 2019) [2024] KEELC 7318 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7318 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 41 OF 2019**

CK NZILI, J

OCTOBER 30, 2024

BETWEEN

PHARES KINOTI HARUN PLAINTIFF

AND

CYRUS GUANTAI MUGAMBI (SUED AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF MUGAMBI MBURUGU ALIAS MUGAMBI M'MBURUGU- DECEASED) DEFENDANT

AND

LEWIS MUTHOMI INTENDED RESPONDENT

RULING

1. By an application dated 25.7.2024, the court is asked to enlarge time; the suit be revived, the orders of 9.5.2023 be set aside, and the court to allow for the joinder or substitution of the deceased defendant with the intended legal representative, who is the applicant herein.
2. The grounds on the face of the application and repeated in the affidavit sworn on the even date by Phares Kinoti Harun are;-that the defendant died on 9.7.2021; his substitution has been in vain; the widow of the deceased was cited for taking out letters of administration, but did not enter an appearance; the limited grant ad litem to substitute was issued on 10.6.2022; the intended legal representative is the son of the deceased who has been issued with a grant ad litem to substitute his father; the suit has since abated and should be revived; the claim is on adverse possession, and unfortunately the suit was struck out on 9.5.2023.
3. Further, the applicant avers that the erstwhile advocates failed to substitute the defendant; the suit had substantially been heard before the striking out; he has made efforts to substitute the defendants;



he has been in occupation of the suit land since 1990, and if the orders are not allowed, he stands to lose the property and that the defendant estate stands to suffer no prejudice. The applicant relies on the attached copies of the citations dated 14.4.2022 and 26.2.2024; affidavit of service; limited grant ad litem dated 10.6.2022 and 10.7.2024; an application dated 13.6.2022 and letter dated 27.6.2024 as annexures marked PKH. "1-6".

4. The application has not been opposed by the respondent, though served upon them as per an affidavit of service sworn on 30.9.2024, by John Muthomi advocate.
5. The Black's Law Dictionary, 11th Edition, defines abatement as the suspension or defeat of a pending action for a reason unrelated to the merits of the claim. Order 24 of the Civil Procedure Rules gives a court the discretionary power to revive a suit once it has abated.
6. Further, Order 24 Rule 4 thereof provides that upon the death of a defendant and where the cause of action survives, then the plaintiff should make an application to cause the legal representative of the deceased defendant to be made a party to the suit. Rule 4(3) thereof provides that within one year, where no application for substitution is made, the suit shall abate as against the deceased defendant.
7. Order 24 Rule 7 (2) provides for the revival of an abated suit that; the plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the trustee or official receiver in the case of a bankrupt plaintiff may apply for an order to revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that any sufficient cause prevented him from continuing the suit, the court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.
8. From the provisions elucidated above, it follows that a plaintiff can make an application seeking the revival of a suit that has abated or set aside an order of dismissal. According to Order 24 Rule 7, an applicant must demonstrate sufficient cause that prevented the suit from continuing. Sufficient cause was defined by the Court of Appeal in *The Hon. Attorney General vs Law Society of Kenya & Another Civil Appeal (Application) No. 133 of 2011*, as the burden placed on a litigant (usually by court of law or order), showing why a request should be granted or an action be excused. See the Black's Law Dictionary, 9th Edition, page 251.
9. The court also held that sufficient cause ought to be rational, plausible, logical, convincing, reasonable, truthful, and one that does not leave any doubt in the mind of a judge. Such an explanation should have no gaps in the sequence of events. In this application, the applicant has explained the predicament he has endured to ensure that the proper party substitutes the deceased defendant. The process of the probate proceedings has been explained at length, and it seems reasonable to have taken the time that it did. The applicant was zealous at proceeding with the suit, whose efforts were curtailed by the successors of the estate of the deceased defendant, precisely the widow. See *Geoffrey Mwangi Kihara vs Mwioko Housing Company Ltd & 3 others* [2015] eKLR
10. This suit is at an advanced stage and it would be a miscarriage of justice, if the court were to terminate it at this stage. Again, the respondent has not averred that it will suffer great prejudice, if the orders are granted. It is only fair that this court grants the orders sought so that the parties can have their day in court.
11. The upshot is the application, is found meritorious and as a result, the orders of 9.5.2023 are set aside. The suit is revived. The initial originating summons shall be amended within 7 days from the date hereof for the legal representative and administrator of the defendant's estate to be joined as the new defendant. Costs of the application shall be in the cause.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 30TH DAY OF OCTOBER, 2024



In presence of

C.A Kananu

Muthomi for applicant

Lewis Muthomi in person

HON. C K NZILI

JUDGE

