



REPUBLIC OF KENYA



KENYA LAW
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**Thuo v Kahenya (Environment & Land Case 160 of 2012)
[2024] KEELC 7281 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7281 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 160 OF 2012
A OMBWAYO, J
OCTOBER 30, 2024**

BETWEEN

JOSPHAT MWAURA THUO PLAINTIFF

AND

LOISE WAMBUI KAHENYA DEFENDANT

RULING

1. Loice Wambui Kahenya the plaintiff/applicant filed an application under Order 8 rule 3 order 24 rules 1,2,3(1) and 7 (2) Order 50 Rule 5 and Order 51 Rule 1 of [Civil Procedure Rules](#) 2010 seeking orders that the court revives the suit against the 2nd defendant Sybella Wanjiku Gitiha who is deceased and that the court enlarges the time to bring in her legal representative Joshua Gitiha Ng'ang'a. That the court be pleased to substitute the 2nd defendant with Joshua Gitiha Ng'ang'a who is the administrator ad litem of her estate for purposes of defending the suit. The plaintiff be allowed to amend the suit to reflect substitution. The application is supported by the affidavit of Loice Wambui Kahenya sworn on 10th July 2024.
2. The explanation given by the applicant for failure to join the intended 2nd defendant in substitution of the 2nd defendant within the prescribed time is that Sybella Wanjiku Gitiha passed on before the case could be concluded. The applicant came to learn of the demise of Sybella Wanjiku Gitiha through a letter dated 18th August 2023 written by the advocate for the 1st defendant. The 2nd defendant family was reluctant to take out a grant of letters of administration and therefore the applicant filed a succession cause No. E185 of 2023. The ruling was delivered on 19th June 2024 when the intended 2nd defendant was appointed as the administrator ad litem. That the grant of the letters of Administration ad litem became known to the applicant on 9th July 2024. The suit abated on 21st May 2024 due to the fact that the 2nd defendant died on 20th May 2023.
3. The respondent contends that the plaintiff applicant has approached the court with unclean hands and has breached the timelines stipulated by law. The applicant was required by law to substitute the



2nd defendant within 12 months from the date of death but did not do so. The respondent contends that the applicant knew of the death of the 2nd defendant but took no action until 10th July 2024.

4. Order 24 of the [civil procedure rules 2024](#) makes provision for cases where the parties are deceased thus:-

24.1. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues.

2.

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 sub-rule (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.

4.

5.

6.

7.1. Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

2. 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 he was prevented by any sufficient cause 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”.

4. I have considered the application and rival submissions and do find that the applicant has justified his delay in making the application for substitution. To begin with the 2nd defendant was the adversary in the suit and that it was the family of the deceased 2nd defendant thus Sybella Wanjiku Gitiha that was required to process a grant of letters of administration ad litem and apply for substitution and proceed with the case but they never did so. The plaintiff took upon herself the onerous task of procuring the grant of letters of administration ad litem in the name of Joshua Gitiha Nganga. The ruling was delivered on 19th June 2024. The grant ad litem was availed on 9th July 2024. The plaintiff seeks the revival of the suit against the 2nd defendant. I do find that the applicant has given sufficient reasons for his failure to substitute the 2nd defendant. I do grant orders that the suit against the 2nd defendant Sybella Wanjiku Gitiha who is deceased is hereby revived and that the time to bring in her legal representative Joshua Gitiha Ng’ang’a is hereby enlarged. That the 2nd defendant is hereby



substituted with Joshua Gitiha Ng'ang'a who is the administrator ad litem of her estate for purposes of defending the suit. Cost of the application in the cause.

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

2024-10-30

