



Humphrey & 2 others v Nzioka (Being Sued as the Legal Administrator of the Estate of Willy Kahome Wanjiku alias Nicholas Nzioka Ndambuki - Deceased) ((Being Sued as the Legal Administrator of the Estate of Willy Kahome Wanjiku alias Nicholas Nzioka Ndambuki - Deceased)); Konza Mali Limited & 119 others (Interested Parties) (Environment & Land Miscellaneous Case 108 of 2019) [2025] KEELC 636 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELC 636 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND MISCELLANEOUS CASE 108 OF 2019**

AA OMOLLO, J

FEBRUARY 13, 2025

BETWEEN

MARGARET WAMAITHA HUMPHREY 1ST PLAINTIFF

JOHN LLOYD KAMAU HUMPHREY 2ND PLAINTIFF

JOSEPH HENRY WAINAINA HUMPHREY 3RD PLAINTIFF

AND

DENNIS KAHORE NZIOKA RESPONDENT

(BEING SUED AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF WILLY KAHOME WANJIKU ALIAS NICHOLAS NZIOKA NDAMBUKI - DECEASED)

AND

KONZA MALI LIMITED & 119 OTHERS & 119 OTHERS & 119 OTHERS INTERESTED PARTY

RULING

1. On 14th March 2024, the 1st Plaintiff filed an application pursuant to order 1 rule 14, Order 24 of the Civil Procedure Rule and article 159 of [the Constitution](#) as well as Section 1A & 3A of [Civil Procedure Act](#). He sought orders;
 - a. That the Honourable Court be pleased to substitute the Defendant herein Willy Kahore Wanjiku alias Nicholas Nzioka Ndambuki (Deceased) with Dennis Kahore Nzioka the Defendant/Respondent herein.



- b. That the Honourable Court be pleased to revive the suit which has abated against Willy Kahore Wanjiku alias Nicholas Nzioka Ndambuki (Deceased).
 - c. That the cost of this application be provided for.
2. A similar application was brought by the 2nd and 3rd Plaintiffs dated 30/5/2024 where they seek orders for;
- i. That the Honourable Court be pleased to extend the time for substitution of the Defendant (Now deceased)
 - ii. That the Honourable Court be pleased to substitute the Defendant herein Willy Kahore Wanjiku alias Nicholas Nzioka Ndambuki (Deceased) with the appointed Administrator of his Estate-Dennis Kahore Nzioka.
 - iii. That the Honourable Court be pleased to revive the instant suit.
 - iv. That the Plaintiffs/Applicants be granted leave to Amend the Statement/Application as set out in the Draft Amended Statement/Application annexed hereto.
 - v. That the Draft Amended Statement/Application be deemed as duly filed and served.
 - vi. That the cost of this application be provided for.
3. The 1st – 100th Interested Parties also filed an application dated 26th March, 2024 under the provisions of Order 1 rule 3 and Order 24 Rules 4 & 7 of the Civil Procedure Rules. They further rely on the provisions of Section 1A, 1B, 3 and 3A of the Civil Procedure Act. These interested parties are praying for orders;
1. That this Honourable Court be pleased to dismiss this suit as a null and void ab-initio having been filed after the Defendant’s demise and/or against deceased party.
 2. That in the ALTERNATIVE and WITHOUT PREJUDICE to Prayer 1, this Honourable Court find that the suit against the Defendant has abated.
 3. That the costs of this application be in the cause.
4. Due to the relationship of the three applications I will proceed to determine them together since the motion by the 1st – 100th Interested Parties wants to have the suit struck out for being null and void, I will consider it first.
5. The Interested Parties application is premised on several grounds as listed here below;
- i. The parties in Succession Cause No. 1754 of 2009 on 19th June, 2019, filed a consent for the matter to be referred to the Environment and Land Court for determination on the ownership of L.R 1504/7/6, L.R No. 6458.
 - ii. Pursuant to the consent, the court in Succession Cause No. 1754 of 2009 issued an order on 3rd December, 2019 directing the Plaintiffs/Respondents herein to file a case for determination of the ownership of L.R No. 1504/716, LR No. 6458.
 - iii. In accordance with the orders, the Plaintiff/Respondents file a suit vide a Case Statement that was later amended on 6th October, 2020. The pleadings stated WILLY KAHORE WANJIKU alias NICHOLAS NZIOKA NDAMBUKI as the purported sole Defendant.



- iv. At the time of filing the pleading, the said Defendant therein, WILLY KAHORE WANJIKU alias NICHOLAS NZIOKA NDAMBUKI was deceased having died on 16th August, 2019.
 - v. The suit as drawn in an abuse of the process of the Honourable Court and is incompetent as against the purported Defendant and cannot be sustained in law.
 - vi. In the alternative and without prejudice to the foregoing, the suit has abated against the purported Defendant who passed away on 16/8/2019 and should be struck out as against him.
 - vii. In light of the above, the suit is fatally defective and contravenes the legal principles underpinning appropriate parties to a suit.
 - viii. Further litigation in the matter as framed and filed with translate to a court countenancing an illegality.
 - ix. It is in the interest of justice that this Application be allowed as prayed.
6. In determining whether the suit is null and void, I have perused the court record and note that this matter commenced in the high court as a succession cause in the year 2009. It partially proceeded before that court before it was subsequently transferred to his court (ELC) on 19th June, 2019 by a consent dated the same day. The defendant is pleased to have died on 16th August, 2019.
 7. It follows that the defendant died after the suit was commenced and subsequently transferred to this court. When the matter was placed before Okong’o J. on 26/6/2019, he gave directions inter alia;
 - a. The Deputy Registrar shall open an ELC Miscellaneous file under the name “In the matter of the estate of the late Margaret Wamaitha Humphrey – deceased and in the matter of L.R No. 1504/716.
 - b. The parties shall be notified of the opening of the ELC file.”
 8. Therefore, the argument by the 1st – 100th Interested Parties that the suit is null and void ab initio having been filed after the defendant’s demise is misplaced. These Applicants prayed in the alterative that this suit be marked as having abated. This would form good ground since the defendant died in 2019 was not substituted within one year as provided for in law.
 9. However, this alternative prayer is made after the 1st Plaintiff already moved the court seeking for reviving of the suit. The prayer for ordering the suit as having abated can only be granted if no sufficient reason is offered to explain the delay.
 10. The 2nd and 3rd Plaintiffs have stated in the grounds in support of the motion that for along time they found it difficult to trace the family of the deceased defendant to enable them issue a citation. That it was until early March 2024 that they discovered one Dennis Kahore Nzioka had petitioned and obtained letters of administration on 21st February, 2023. That the cause of action survived the deceased defendant.
 11. As the record does bear out, this legal representative did not complain from being substituted in this matter. In fact, he has hit the ground running by filing an application dated 5th August, 2024 seeking orders of temporary injunction against the plaintiffs.



12. Order 7 rule 2 of the Civil Procedures Rule states that a suit can be revived where sufficient cause has been shown. In the case *Rebecca Miide Mungole & Another vs Kenya Power & Lighting Company Ltd & 2 Others* (2017) eKLR the Court of Appeal held at paragraph 12 thus;

“ A prayer for revival of a suit cannot be allowed as a matter of right or course. If the Applicant demonstrates and the court is satisfied that he was prevented by any sufficient cause from continuing the suit, the court will allow revival upon such terms or otherwise as the court deems fit.”

13. In the instant suit, even before the orders for enlargement of time and revival of the suit could be granted. The party sought to replace the deceased defendant has also filed pleadings. It means he has no objection to the revival of the suit and his being joined as the legal administrator of the deceased defendant. This shows every reason to revive the abated suit to allow parties opportunity to present/ defend the claim.

14. Consequently, I shall allow both applications by the plaintiffs dated 14th March, 2024 and 30th May, 2024 respectively with costs in the cause. The 1st – 100th Interested application dated 26th March, 2024 is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF FEBRUARY, 2025

A. OMOLLO

JUDGE

