



**Muchangi (Suing as the manager and legal guardian of Francis Muchangi)
v Lucky Summer Estate Co Ltd & 3 others (Environment & Land Case
347 of 2005) [2024] KEELC 13405 (KLR) (18 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13405 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 347 OF 2005
LN MBUGUA, J
NOVEMBER 18, 2024**

BETWEEN

**PURITY WAMBUI MUCHANGI (SUING AS THE MANAGER AND LEGAL
GUARDIAN OF FRANCIS MUCHANGI) PLAINTIFF**

AND

LUCKY SUMMER ESTATE CO LTD 1ST DEFENDANT

GEORGE RUIRU 2ND DEFENDANT

SAMUEL NYONGO KIARA 3RD DEFENDANT

SALER KIARA 4TH DEFENDANT

RULING

1. Before me is the 1st and 2nd defendants Notice of Motion Application dated 4.3.2024 seeking orders that the case of the 2nd defendant be declared as having abated or in the alternative, the advocates for the applicants be allowed to cease acting. The application is premised on grounds on the face of the application and the supporting affidavit of Kanyi Ndurumo, the advocate for the applicants. He contends that the 2nd defendant died many years ago and the family did not take out letters of administration. He no longer has instructions to represent the 2nd defendant, that is why he seeks the alternative prayer to cease acting for that particular party.
2. In a supplementary affidavit dated 11.9.2024, the deponent, Kanyi Ndurumo has availed a copy of the death certificate of the 2nd defendant, indicating that the said party died on 9.1.2021.
3. The application is opposed by plaintiff vide her replying affidavit (date not clear). She contends that the death certificate annexed to the supplementary affidavit is not conclusive evidence of death and she questions how the advocate obtained the death certificate without instructions from the family of the



deceased. She prays for time to investigate the issue, so as to take out a citation if the 2nd defendant is deceased.

4. I have considered all the arguments raised herein. The provisions of Order 24 rule 4 (3) of the Civil Procedure Rules stipulate that “where a defendant dies and where within one year no application is made under sub rule 1, the suit shall abate against the deceased defendant.” In the case at hand, the plaintiff doubts the authenticity of the death certificate which has been availed by counsel for the applicants. However, the plaintiff has not presented any material before this court to challenge the said death certificate.
5. The plaintiff seeks for more time to investigate the issue. However the suit against the 2nd defendant has abated by operation of the law. Thus an abated suit is non-existent prior to it being revived, See; Mbaya Nzulwa v Kenya Power & Lighting Co. Ltd [2018] eKLR. Thus as at now there is nothing to be extended.
6. In the end, the court allows the application dated 4.3.2024 to the extent that the suit against the 2nd defendant is marked as ABATED. Each party is to bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18th DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

M/s Ndirangu for Plaintiff

Kanyi Ndurumo for 1st and 2nd Defendant

Court Assistant: Vena

