



**Kigunda v Marushi & 4 others (Environment & Land Case  
69 of 2017) [2024] KEELC 7490 (KLR) (12 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7490 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 69 OF 2017  
MN GICHERU, J  
NOVEMBER 12, 2024**

**BETWEEN**

**JOHN GITHI KIGUNDA ..... PLAINTIFF**

**AND**

**STEPHEN KISEMEI MARUSHI ..... 1<sup>ST</sup> DEFENDANT**

**AHMED IBRAHIM ..... 2<sup>ND</sup> DEFENDANT**

**MR. MALEI ..... 3<sup>RD</sup> DEFENDANT**

**BEATRICE CHEMELI ..... 4<sup>TH</sup> DEFENDANT**

**ROSE AKAME ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of preliminary objection dated 15/10/2021 which posits as follows.
  1. That the plaintiff in this suit died in 2017.
  2. That no application to substitute the deceased plaintiff was made within one year of plaintiff's demise in compliance with order 24 rule 3 of the Civil Procedure Rules.
  3. That the suit has abated in so far as deceased plaintiff is concerned by operation of the law.
  4. That this Honourable Court lacks jurisdiction in so far as an abated suit is concerned.
2. The motion is opposed by the plaintiff who states that an application dated 30/5/2018 seeking the appointment of a legal representative to the estate of the deceased was allowed by the court on 18/3/2019. This motion is therefore frivolous and vexatious and should be dismissed.
3. I have carefully considered the motion in its entirety and I find that it has no merit for two reasons. Firstly, an application dated 30/5/2018 was filed in court on 4/6/2018. The application sought to



substitute John Githi Kigunda with Jonathan Karuga Kigunda. The said application was allowed on 18/3/2019. The motion dated 15/10/2021 is therefore based on a fallacy. Secondly, under order 24 rule 3 (2) at the proviso, the court has discretion to extend time even if an application is made more than a year after the death of a party. As stated in the ruling dated 2/12/2021 the court would rather sustain a suit than dismiss it. Dismissing a suit concerning land before hearing the parties is neither fair nor just. Finally, this suit has now been pending in court since 8/12/2010 which is almost 14 years. Both parties have been reluctant to proceed making applications which only serve to delay the expeditious conclusion of this suit on merit. I dismiss the motion dated 15/10/2021 with costs to the respondent.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY 12<sup>TH</sup> DAY OF NOVEMBER 2024.**

**M.N. GICHERU**

**JUDGE**

