



**Njoroge & another v Njoroge & another (Environment & Land Case 39 of 2019) [2024] KEELC 13997 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13997 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 39 OF 2019**

**BM EBOSO, J  
DECEMBER 17, 2024**

**BETWEEN**

**DANIEL MUIRURI NJOROGE ..... 1<sup>ST</sup> PLAINTIFF**

**ESTHER NYOKABI NJOROGE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**VIRGINIA WAIRIMU NJOROGE ..... 1<sup>ST</sup> DEFENDANT**

**SOUTHBROOK HOLDINGS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Falling for determination in this ruling is the 1st plaintiff's notice of motion dated 27/2/2024, through which he seeks: (i) an order enlarging the time within which to initiate an application for revival of the suit against the 1st defendant [Virginia Wairimu Njoroge] and for substitution of the deceased by her personal representative; and (ii) an order substituting Ann Njeri Kumuru in place of Virginia Wairimu Njoroge who is now deceased. The application is premised on the grounds outlined in the motion and in the plaintiff's supporting affidavit.
2. The case of the 1st plaintiff/applicant is that the late Virginia Wairimu Njoroge is his deceased mother who died on 30/8/2021 during the pendency of this suit. He adds that on 4/1/2023, Ann Njeri Kumuru was appointed as the administrator of the deceased's estate. The 1st plaintiff/ applicant further states that the suit having abated, there is need for enlargement of the time within which to seek substitution and revival. Lastly, the 1st plaintiff/applicant states that the 12 months statutory period lapsed because the estate was looking for an administrator.
3. The 1st defendant was represented in court by Mr Mwangi Advocate who stated that the estate would not oppose the application. The 2nd defendant opposed the application through a replying affidavit sworn by Collins O. N Kowuor on 26/3/2024 and written submissions dated 14/8/2023, filed by M/ s Wainaina Ileri Advocates.



4. The 2nd defendant's case is that the plaintiff is guilty of laches because he filed this application more than 2 years after the 1st defendant's death which occurred on 30/8/2021. The 2nd defendant contends that the allegation by the plaintiff that he came to the realization that his aunt could take out letters of administration almost two years after the 1st defendant's death was unsupported and disingenuous. The 2nd defendant further contends that the plaintiff is presumed to have obtained legal advice because he has had legal representation throughout the pendency of the suit.
5. The 2nd defendant faults the applicant for failing to comply with the court's directions given on 17/1/2023 granting him a last adjournment and directing him to resolve the underlying family issues within 30 days and thereafter record a consent in Court. The 2nd defendant states that the delay in substituting the deceased is inexcusable. The 2nd defendant adds that the applicant has approached the Court with unclean hands, hence the application should be rejected.
6. The court has considered the application, the response to the application, and the parties' respective submissions on the application. The single issue to be determined in this ruling is whether the application dated 27/2/2024 satisfies the criteria upon which our trial courts exercise jurisdiction to enlarge time.
7. The general principles that guide our courts when exercising the discretionary jurisdiction to enlarge time were outlined by the Supreme Court of Kenya in *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 Others* [2014] eKLR as follows:
  - a. Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court;
  - b. A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court;
  - c. Whether the court should exercise the discretion to extend time, is a consideration to be made on a case-to-case basis;
  - d. Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court;
  - e. Whether there will be any prejudice suffered by the respondents if the extension is granted;
  - f. Whether the application has been brought without undue delay; and
  - g. Whether in certain cases, like election petitions, public interest should be a consideration for extending time."
8. In the present application, the applicant has demonstrated that the deceased died on 30/8/2021. The deceased's estate did not initiate succession proceedings until 2023 when it initiated Thika Succession Misc Cause No E001 of 2023 which culminated in the appointment of Anne Njeri Kumuru as the administrator of the deceased's estate on 4/1/2023.
9. The court record shows that in February 2023, the applicant brought an application seeking substitution and revival orders. The applicant subsequently withdrew the application when it emerged that he had omitted to make a plea for enlargement of the time within which to apply for revival and substitution. He brought the present application soon after withdrawing the preceding ill-fated application.
10. In opposing the present application, the 2nd defendant contends that the applicant has been indolent. There is, however, no evidence of indolence on part of the applicant. The materials on record show that



the applicant moved promptly to initiate substitution and revival proceedings soon after the succession court issued a grant relating to the estate of the deceased. Owing to a human error, the application turned out to be ill-fated and was withdrawn to pave way for the filing of a competent application.

11. Given the above circumstances, this court is satisfied that the application dated 27/2/2024 meets the criteria for enlargement of time. The result is that the period within which to bring an application for substitution of the 1st defendant who is now deceased and the period within which to bring a plea for revival of the claim against the said deceased defendant is enlarged by 14 unexcluded days, meaning that, the period running from 21/12/2024 to 13/1/2025 will be excluded when computing the 14 days. Costs of the application shall be in the cause. Prayers 2 and 3 of the application dated 27/2/2024 are to be canvassed in the fresh application. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 17TH DAY OF DECEMBER 2024**

**B M EBOSO**

**JUDGE**

In the Presence of: -

Mr Odhiambo for the Applicant

Mr Mwangi for the 1st Defendant

Mr Mwai Muthoni for the 2nd Defendant

Court Assistant: Hinga

