



Iraki & another v Ndungu & 2 others (Environment & Land Case 767 of 2017) [2024] KEELC 13719 (KLR) (10 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13719 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 767 OF 2017**

JG KEMEI, J

DECEMBER 10, 2024

BETWEEN

LIZA WAIRIMU IRAKI 1ST PLAINTIFF

PETER IRAKI MWAURA 2ND PLAINTIFF

AND

MAGDALENE WANGUI NDUNGU 1ST DEFENDANT

**SAMUEL NGUMBA NGARUIYA (BEING SUED AS THE
LEGAL REPRESENTATIVES OF LILIAN WAIRIMU NGARUIYA -
DECEASED) 2ND DEFENDANT**

LAND REGISTRAR, KIAMBU 3RD DEFENDANT

RULING

1. It is the Motion dated the 29/6/2023 filed by the 1st Plaintiff. To place the Ruling in context a brief summary of its background is necessary.
2. On 16/3/2023 this Court allowed the 2nd Defendant's Application dated 28/9/2022 seeking in the main to strike out the suit as contained in the Amended Plaint dated 24/2/2022 on the ground that the 2nd Plaintiff had not been substituted within the statutory period. The Motion was opposed and directions taken for parties to canvass the Application by way of submissions which the parties fully complied with. The aftermath of the said Ruling effectively struck out the Plaintiffs' suit for a number of reasons inter alia the 2nd Plaintiff's case abated by operation of law for want of substitution and the cause of action did not survive to the 1st Plaintiff. Three months after delivery of the Ruling, the 1st Plaintiff/Applicant has filed the instant Motion dated 29/6/2023 seeking in the main extension of time to substitute the 2nd Plaintiff; joinder of the 1st Plaintiff into the suit; revival of the suit and her



substitution in the suit as an administrator of her late husband, the 2nd Plaintiff. The said Application is the subject of this Ruling.

3. The Application is premised on grounds that the 2nd Plaintiff died on 13/4/2021; the suit was struck out due to failure to substitute the 2nd Plaintiff as envisaged under Order 24 rule 3 of the [Civil Procedure Rules](#); the 1st and 2nd Plaintiff are a couple and the suit involves irregular transfer of the land parcel LR No. Karai/Gikambura/482 (the suit land) on which they built their matrimonial home; her previous Counsel failed to advise her on substitution of the 2nd Plaintiff and being a lay person she relied on the professional advise of her Counsel; that the mistake of Counsel should not be visited on her; on 19/5/2023 the 1st Plaintiff has obtained Letters of Administration to represent the 2nd Plaintiff's interests hence the Application before Court.
4. In support of the Motion, the 1st Plaintiff Liza Wairimu Iraki swore her Affidavit of even date and rehearsed the above grounds. She annexed copies of the 2nd Plaintiff's Death Certificate and Grant of Letters of Administration issued in Kiambu HC Succ. Case No. E031 of 2023 on 18/5/2023.
5. The Application is opposed by the 2nd Defendant/Respondent's Replying Affidavit dated 4/12/2023. John Wamiti Njagi the 2nd Defendant's Counsel outlined the history of the suit before Court leading to the Ruling delivered on 16/3/2023. He accused the 1st Plaintiff for reneging on her previous averments prior to the said Ruling and now blaming her former advocates for mistakes which ought not to be visited upon her. That the Application is mischievous and filed in bad faith contrary to the hallowed principle that litigation must come to an end. That the Applicant has not established that she was prevented by any sufficient cause from continuing with the suit to warrant revival of the suit at this time; that there are no good reasons to warrant extension of time to cause the substitution and joinder of the 2nd Plaintiff's legal representative into the suit and any indolence or ignorance on the part of the Applicant does not amount to sufficient cause to allow the Application. That it is unclear why she has now obtained another Letters of Administration having avowed in October 2022 that she had the requisite Grant of representation when in fact there was no Grant obtained in October 2022 and such claim was mischievous only intended to mislead the Court. He urged the Court to dismiss the Application with costs.
6. On 21/2/2024 parties took directions to prosecute the Application by way of written submissions.
7. The firm of Kimamo Kuria Advocates filed the Applicant's submissions dated 2/4/2024 while the firm of Wamiti Njagi & Associates filed the Respondent's submissions dated 5/6/2024. I have read and considered the written submissions in the Ruling.
8. The main issue for determination is whether the Application is merited.
9. Before delving into the merits or otherwise of the Application, I am inclined to address the competency of the Motion as drawn.
10. The provision of Order 24 rule 7 (2) of the [Civil Procedure Rules](#) is to effect that;

“7. Effect of abatement or dismissal [Order 24, rule 7.]

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.”



11. The record of the Court as it stands is that the suit was struck out on 16/3/2023 vide this Court's Ruling of even date. The said Ruling has not been set aside or orders varied. In the absence of any prayer setting aside the said Ruling I find that the application is incompetently before the Court. It is hereby struck out. I make no orders as to costs.

12. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 10TH DAY OF DECEMBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

1st and 2nd Plaintiffs – Absent

1st Defendant – Absent

Wamiti Njagi for the 2nd Defendant

3rd and 4th Defendants - Absent

Court Assistant – Phyllis

