



**Mulumia v Sindani & another (Environment & Land Case
106 of 2016) [2023] KEELC 378 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 378 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 106 OF 2016
BN OLAO, J
JANUARY 26, 2023**

BETWEEN

WYCLIFF KHANJILA MULUMIA PLAINTIFF

AND

PETER MULUMIA SINDANI 1ST DEFENDANT

LUMBASI SHILUNJI SILAS 2ND DEFENDANT

RULING

1. Wycliffe Khanjila Mulumia (the plaintiff herein) first approached this Court *vide* his Notice of Motion dated August 9, 2021 and premised under the provisions of Sections 1A, 1B, 3A and 3B of the [Civil Procedure Act](#) and Order 24 Rule 491) and (2) of the [Civil Procedure Rules](#). He beseeched this court to grant him the following reliefs:
 1. That this honourable court be pleased to extend time within which to substitute the 1st defendant who is deceased.
 2. That consequent to the grant of prayer (2) above, this honourable court be pleased to substitute the 1st defendant Peter Mulumia Sindani (deceased) with Beatrice N Mulumia.
 3. Costs of the application be in cause.

The application was not opposed.

2. However, upon considering the application in light of the relevant provisions of Order 24 of the [Civil Procedure Rules](#), I took the view that since the plaintiff had not sought the revival of the abated suit, there was no basis upon which any substitution could be made. I therefore found that the application was incompetent and struck it out *vide* a ruling delivered on March 21, 2022.



3. The plaintiff has now approached this court *vide* another notice of motion dated April 4, 2022 and which is the subject of this ruling. The application is also premised under the provisions of Sections 1A, 1B, 3A and 3B of the Civil Procedure Act as well as Order 24 Rule 4(1) (2) of the Civil Procedure Rules. The plaintiff seeks the following remedies:

1. Spent
2. That this Honourable Court be pleased to revive the plaintiff's suit against the 1st defendant.
3. That consequent to the grant of prayer (2) above, this Honourable Court be pleased to substitute the 1st defendant Peter Mulumia Sindani – deceased with Beatrice N Mulumia.

The application is predicated on the grounds set out therein and is also supported by the plaintiff's affidavit also dated April 4, 2022.

4. The gist of the application is that the deceased Peter Mulumia Sindani passed away on March 31, 2017 and the Grant of Letters of Administration intestate was issued to his widow Beatrice N. Mulumia on January 15, 2021 after she filed succession proceedings in Bungoma Cmcc Succession Cause No 260 Of 2018. Before that, she had been reluctant to take out letters of Administration which prompted the plaintiff to cite her. This caused the delay in filing this application.

5. The following documents are annexed to the application:

1. Citation in Bungoma Cmcc Citation Cause No 483 of 2017.
2. Grant of Letters of Administration Intestate issued to Beatrice N Mulumia In Succssion Cause No. 260 Of 2018.
3. Ruling dated March 21, 2022.

The application is opposed and Betarice Mulumia has filed a replying affidavit in which she has averred, inter alia, that she is the widow of Peter Mulumia Sindani (the deceased) who passed away on March 31, 2017 and is aware about these proceedings. That she petitioned for letters of Administration over the deceased's Estate and the same were granted on January 15, 2021 a matter that the plaintiff was aware about. That this litigation has no basis since the issues have been determined in previous litigation including the rulings of Justices G P Mbito and Kasanga Mulwa and the revival of this suit will prejudice her and her family. That this application is therefore re-judicata and a waste of judicial time as well as being an abuse of the process of this court.

6. The following documents are annexed to the replying affidavit:

1. Judgment of G P Mbito J In Bungoma H C Appeal No 70 Of 2020.
2. Vesting Order issued on December 21, 1999 in Webuye Rmc Misc Application No 10 Of 1998.
3. Proceedings and ruling in Bungoma H.c Appeal No 70 Of 2000 By K. Mulwa J.

7. The application has been canvassed by way of written submissions. These have been filed both by Mr murunga instructed by the Firm of J O Makali advocates for the plaintiff and by Mr Masinde instructed by the firm of Masinde & Company Advocates For The 1st defendant.



8. I have considered the application, the rival affidavits and annexures thereto as well as the submissions by counsel.
9. It is not in dispute that the deceased 1st defendant passed away on March 31, 2017. Therefore, both through effluxion of time and the operation of the law, the suit against him abated on April 1, 2018. Order 24 Rule 4 (3) of the [Civil Procedure Rules](#) provides that:

“Where within one year no application is made under sub rule (1), the suit shall abate against the deceased defendant.”

The plaintiff however has a window to save the suit as against the deceased 1st defendant by invoking Order 24 Rule 7(2) of the [Civil Procedure Rules](#) which reads:

“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.” Emphasis mine.

Therefore, although the suit against the deceased 1st defendant abated by operation of the law, the plaintiff could apply for its revival if he could demonstrate “sufficient cause” which prevented him from continuing with the suit. Counsel for the plaintiff has in his submissions cited the provisions of Order 24 Rule 3(2) which provides “that the Court may, for good reason on application, extend time.” I think Order 24 Rule 3(2) applies in the case where the plaintiff has died. Indeed the marginal notes in Order 24 Rule 3 of the [Civil Procedure Rules](#) reads:

“Procedure in case of death of one of several plaintiffs or of sole plaintiff.”

Order 24 Rule 4 of the [Civil Procedure Rules](#) on the other hand reads in the marginal notes thus:

“Procedure in case of death of one of several defendants or of sole defendant.”

Either way, the bottom line is that a person seeking the revival of an abated suit must prove “good reason” or “sufficient cause.” The terms good and sufficient cause have been said to mean one and the same thing – *Qureshi & Another v Patel & Others* 1964 Ealr 633.

10. In an attempt to demonstrate that he had good reason or sufficient cause for not approaching this Court in time, the plaintiff has deponed in paragraphs 3, 4, 5, 6, 8 and 9 of his supporting affidavit as follows:
 3. “That the 1st defendant/respondent passed away on the March 31, 2017 when the matter was still pending.”
 4. “That the heir apparent to the Estate of the 1st defendant (deceased) one Beatrice N. Mulumia was reluctant to take out letters of Administration which prompted me to cite her vide citation proceedings in Bungoma CMCC Citation Cause No 483 Of 2017 – copy of the citation and affidavit in support are hereto annexed and marked WKM-1.”
 5. “That the widow to the 1st defendant subsequently filed succession proceedings vide Bungoma CMCC Succ Cause No 260 Of 2018.”



6. “That on January 15, 2021 a grant of letters of Administration intestate was issued to Beatrice N Mulumia as the Administratrix of the Estate of the 1st defendant – copy of the Grant is hereto annexed and marked WKM-2.”
8. “That because the heir apparent to the Estate of the 1st defendant was unwilling to take out letters of Administration, I was forced to take out citation proceedings to compel her take out letters of Administration in the Estate of the deceased.”
9. “That it is for the above reasons that I was not able to file the application for substitution in good time.”

In rebuttal averments, Beatrice Mulumia has deponed as follows in paragraph 4 of her replying affidavit.

4. “That the applicant/plaintiff was aware of the grant but took no action to do substitution and prosecute his suit since he became aware of the grant as by the time he filed his motion for substitution his suit against the deceased had abated by operation of the law almost 16 months earlier and I was not aware of this motion until the July 24, 2022.”

There is no doubt that the plaintiff was aware of far back as January 15, 2021 that Beatrice N. Mulumia had obtained Grant of Letters of Administration in respect to the Estate of the deceased 1st defendant. Indeed a copy of that grant was among the annexures to his earlier application dated August 9, 2021. While it is true that the Beatrice N Mulumia was reluctant to take out Letters of Administration in respect to the Estate of the deceased 1st defendant until she was cited, she eventually did so and subsequently obtained the same on January 15, 2021. That fact has all along been within the knowledge of the plaintiff who used it in his previous application. He has not however offered any “good reason” or “sufficient cause” or indeed any explanation, satisfactory or otherwise, why it took him 16 months to file this application.

11. In the case of *Hon Attorney General v The Law Society Of Kenya & Another* CA Civil Appeal No 133 Of 211 (2013 eKLR) Musinga JA described the term “good and sufficient cause” as follows:

“Sufficient cause or good cause in law means:-

‘the burden placed on a litigant usually by a court rule or order) to show why a request should be granted or any action excused see *Black’s Law Dictionary* 9th Edition page 251. Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubt in a judge’s mind. The explanation should not leave unexplained gaps in the sequence of events.” Emphasis mine.

12. It must also be remembered that extension of time is not a right. It is an equitable remedy granted at the discretion of the court. The onus is therefore upon the party seeking such a remedy to place before the court sufficient or good reasons why such discretion should be exercised in his favour. Evidence is the basis upon which discretion is exercised. There must also be full and honest disclosure of all material facts. In the absence of all the above from the plaintiff, it is difficult for this court to exercise its discretion in his favour.
13. In his submissions counsel has referred to the decision of Oundo J In *Mathenge Ngatiangari v Christopher Wangombe Ngaita* 2020 eKLR where the judge invoked the provision of Sections 1A and



1B of the Civil Procedure Act as well as Article 159(2) of the Constitution. But in that case, the judge also found as follows of paragraph 23 of the ruling:

“The plaintiff who was 89 years was unable to file for substitution of the defendant in good time due to his old age and the fact that he was ailing but when he got better, he applied for revival of the suit vide his application dated the February 27, 2017 and amended on March 23, 2017. Before the application could be heard, he too passed away on the March 22, 2017 and the amended application of the March 23, 2017 was withdrawn.”

It is clear from the above that in that case, there were good and compelling reasons why the judge exercised her discretion in allowing the application before her notably the fact that the Applicant was aged and ailing but he nonetheless moved to Court when he got better. As I have already stated above, in the circumstances of this case, while it is true that Beatrice N Mulumia had to be cited before she moved to apply for the Grant of letters of Administration, she eventually obtained them on January 15, 2021. However, the plaintiff has not offered any explanation as to why he did not file this application soon thereafter. I therefore have no basis upon which to exercise my discretion in his favour.

14. Ultimately therefore, the notice of motion dated April 4, 2022 is devoid of merit. It is accordingly dismissed with costs.

RULING DATED, SIGNED AND DELIVERED AT BUSIA ON THIS 26TH DAY OF JANUARY 2023 BY WAY OF ELECTRONIC MAIL WITH NOTICE TO THE PARTIES.

BOAZ N. OLAO

JUDGE

26TH JANUARY 2023

