



Case Number:	Civil Suit 117 of 2001
Date Delivered:	29 Dec 2005
Case Class:	Civil
Court:	High Court at Mombasa
Case Action:	-
Judge:	John Wycliffe Mwera
Citation:	WALTER KUNDERT & ANOTHER V WARDA MOHAMED SHALI [2005] eKLR
Advocates:	-
Case Summary:	[RULING] Civil Practice and Procedure-suits-abatement-where the plaintiffs have since died and one year has passed without any substitution of the dead plaintiffs-whether the suit has abated-Civil Procedure Rules, Order XXIII, rule 3(2)
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Suit 117 of 2001

1. WALTER KUNDERT

2. DORIS KUNDERT PLAINTIFFS

- Versus -

WARDA MOHAMED SHALI
DEFENDANT

Coram: Before Hon. Justice Mwera

Khatib for applicant

Lijodi for respondent

Court clerk – Mitoto

RULING

By a Chamber Summons dated 24th March 2005 the defendant invoked O23 r. 3(2) Civil Procedure Rules and Section 3A Civil Procedure Act praying that the suit herein be marked as having abated because the 2 plaintiffs have since died. He also sought judgement on the counter claim.

Mr. Khatib submitted and Mr. Lijodi appeared to agree that the 1st plaintiff died in 1999. The 2nd plaintiff who then became the legal representative of the 1st plaintiff, also she died on 5th November 2003. That there had been no substitution (by her legal representative) since and so the suit has abated. Yes. From the time of death to the time this application was filed a year had gone by without substituting the dead plaintiff (s) and so under O23 r. 3(2) Civil Procedure Rules the suit has abated and it is thus so marked. Costs to the defendant in terms of that provision of law.

As for the counter – claim the defendant will not automatically get judgement following the above ruling. In essence a counter – claim is and can be treated as a separate suit. The defendant will take due course as regards further proceedings in it.

Orders delivered on 29th December 2005.

J.W. MWERA

JUDGE



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)