

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL APPEAL NO. 90 OF 2001

RICHARD GITHAIGA MWANGI (DECEASED) SUBSTITUTED

BY CECILIA WAMBUI GITHAIGA.....APPLICANT

VERSUS

MARION GATHONI THITAI.....RESPONDENT

RULING

The subject matter of this ruling is the Notice of Motion dated 29/11/2011 in which **Cecilia Wambui Githaiga**, hereinafter referred to as the applicant sought for the following orders:

1. **That the Honourable court be pleased to set aside and/or review its orders of 27/5/2011 and revive the Appeal which the Honourable court declared abated following the death of the Appellant.**
2. **That Cecilia Wambui Githaiga who was substituted in place of Richard Githaiga Mwangi in the Appeal on 17/11/2011 be allowed to prosecute the same.**
3. **That the costs of this application be provided for**

The Motion is buttressed by the affidavit of the applicant. The Motion is opposed by **Marion Gathoni Thitai**, hereinafter to as the Respondent.

The record shows that on 27th May 2011, this court made order stating that since the appeal had abated upon the death of the appellant hence there was nothing to dismiss. The applicant has now come before this court seeking to have the aforesaid decision reviewed and set aside. This court is also urged to issue an order reviving the appeal. The applicant explained in detail the reasons for the delay. She stated that she was financially constrained after her husband (the appellant herein) passed on. She also explained that it took time to obtain letters of administration to succeed the deceased due to disagreements within the family. It is clear she managed to be appointed as the legal representative of Richard Githaiga Mwangi, deceased on 17/11/2011 and thereafter she moved with speed so that on 2nd December,2011 she managed to file the current motion. The Respondent in a lengthy affidavit urged this court to dismiss the Motion on the basis that the same lacks merit. She alleged that the applicant had failed to take up letters of administration until she was forced to cite her through citation proceedings. She claimed the Applicant had by 2007 been given temporary letters of administration in respect of the estate of her deceased husband. She stated that it was therefore untenable for her to further obtain limited letters of administration on 20/12/2010 yet she had already succeeded the deceased.

I have carefully considered the rival averments and it is clear in my mind that the applicant herein has not been candid to this court. It is obvious that he decided to apply for limited letters of administration in respect of the estate of the late Richard Githaiga Mwangi to establish a ground for the revival of the appeal. In my view, it was not an innocent act but it was calculated to hoodwink this court.

For the above reason, I decline to give order sought. The motion dated 29/11/2011 is dismissed with costs to the Respondent.

Dated, Signed and delivered this 16th day of December 2013.

J.K.SERGON

JUDGE

- In open Court in the presence of Mr. Kimunya holding brief for Ndegwa for Respondent.
- N/A for Nzioka for Applicant.