



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njau v Rukaria & 3 others (Environment and Land Appeal 13 of 2014)  
[2022] KEELC 13727 (KLR) (19 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13727 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL 13 OF 2014**

**CK NZILI, J**

**OCTOBER 19, 2022**

**BETWEEN**

**FRANCIS Z MWOBOWIA NJAU ..... APPELLANT**

**AND**

**STANLEY KIUNGA RUKARIA ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPH MUTUA ..... 2<sup>ND</sup> RESPONDENT**

**PAUL KITHINJI M'NKANATA ..... 3<sup>RD</sup> RESPONDENT**

**JOSEPH KARIA M'TWAMWARI ..... 4<sup>TH</sup> RESPONDENT**

*(Being an appeal from the ruling delivered on 17.4.2014 in Meru  
CMCC No. 393 of 2013 between Francis Mwobobia Njau and  
Stanley Kiunga Rukaria & 3 others by Hon. E.W Wambugu, RM)*

**JUDGMENT**

1. The court is asked to dismiss this appeal since it has abated and despite leave and time granted to regularize, the position no efforts have been made to do so.
2. On 17.7.2017 this court admitted for hearing this appeal which was lodged on 9.5.2014 and directed that the record of appeal to be filed and served. The order was complied with and a record of appeal was filed on 10.11.2017. On 24.4.2018, the court was informed that the appellant had passed on. The court granted an order for substitution. A date was given for 24.4.2018 to confirm compliance with the order. This was not done until 4.2.2019 when the respondent urged the court to find the appeal had abated. Once again, counsel for the appellant sought for more time to apply to substitute the deceased party.
3. On 31.8.2020, the court ordered that a supplementary record of appeal be filed. This was done on 1.2.2021. Directions were also made for canvassing the appeal through written submissions on



28.11.2021 by the deadline of 28.2.2021. When the matter was again mentioned on 14.4.2021, counsel for the applicant said his client had died but could not remember the date. The court once again gave him time to substitute. To date no such compliance has been made. Despite notice to show cause issued to the said counsel for 18.7.2022 no cause has been shown.

4. Order 42 Rules 20 & 35 of the Civil Procedure Rules grants the court powers to deal with an appeal where there has been non-compliance and non-prosecution. Order 24 Civil Procedure Rules also applies to appeals as per Order 24. Rule 9 Civil Procedure Rules.
5. In this appeal, the court was told in 2019 that the appellant was deceased. This was confirmed by counsel for the appellant several times. Efforts to give the appellants counsel time to substitute and or comply with court time lines have been ignored.
6. In Elizabeth Wanjiru Nsenga & another vs Margaret Wanjiru Kingaru & 2 others (2018) eKLR citing with approval Abok James Odera T/A A.J Odera & Associates vs John Patrick Machira T/A Machira & Co advocates (2013) eKLR held that Sections 1A, 1B, 3A & 3B of the Civil Procedure Act, confers on the courts considerable latitude in the exercise of its discretion in the interpretation of the law and rules made thereunder, and emboldens the court to be guided by a broad sense of justice and fairness by construing them in a manner that facilitates the just, expeditious proportionate or affordable resolution of appeals.
7. In Issa Masudi Mwabumba vs Alice Kavenya Mutunga & 4 others (2012) eKLR, Koome J.A as she then was, held that the overreacting objectives in the administration of justice has a goal at the end of day of allowing the court to attain justice and fairness in circumstances of each case, which is the same thread that kneads through Constitution of Kenya 2010 in particular Article 159 thereof.
8. In the present appeal no action has been taken since the appeal was admitted in 2017 and the attempts granted to substitute initially on 24.7.2018 and many other times thereafter. Therefore, I find it serves no useful purpose and the ends of justice in parking the file in our records when the appellant is no more and his agents, the advocates on record have failed to act accordingly and comply with court directives. Court orders are not made in vain. The respondents are equally entitled to justice. In the circumstances I find the appeal has abated. The same is dismissed with costs to the respondents.

Orders accordingly

File closed.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 19<sup>TH</sup> DAY OF OCTOBER, 2022**

**In presence of:**

C/A: Kananu

Murira for respondent

**HON. C.K. NZILI**

**ELC JUDGE**

