Meru & 3 others v Meru (Civil Appeal (Application) 9 of 2018)
[2025] KECA 1605 (KLR) (3 October 2025) (Ruling)

Neutral citation: [2025] KECA 1605 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NYERI

CIVIL APPEAL (APPLICATION) 9 OF 2018

S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA

OCTOBER 3, 2025

BETWEEN

LOISE WANJIRU MERU ..... 1ST APPLICANT

KEZIA WANJIRU ..... 2ND APPLICANT

ROWLAND MAINA MUCHIRI ..... 3RD APPLICANT

JOHN MACHARIA MERU ..... 4TH APPLICANT

AND

JOHN MIGWI MERU ..... RESPONDENT

(An application for review from the Judgment of the Court of Appeal at Nyeri (W. Karanja, J. Mohammed & L. Kimaru, JJA.) delivered on 27{{^th}} October, 2023 in Civil Appeal No. 9 of 2018)

RULING

1. This Court differently constituted delivered a judgment on 27th October, 2023 where the appellant's appeal was dismissed. The Court expressed itself and made the following findings at paragraphs 14-16 (inclusive) of the judgment:

> " 14. On whether the power of attorney survives the death of the donor, there is consensus by both courts below that the power of attorney is extinguished upon death of the donor. We agree with that finding. In the present case, when the respondent's mother died, the power of attorney that anchored him to file the suit on behalf of his mother was dislodged. The suit did not nonetheless sink and the respondent was able to take quick action to salvage it and put it back on course. The expiry of the power of attorney did not "kill" the suit as intimated by the appellants.

15. On the second issue, the law on abatement of suits is clear and was clearly articulated by the High Court. A suit abates 12 months after the death of a party if no substitution has been done. In this case, as correctly held by the learned Judge, the suit had not abated as first and foremost, the cause of action, which was not personal to the deceased, survived her. Secondly the respondent was appointed as legal representative to that estate within 12 months and sought to be substituted as the plaintiff within the 12 months.

16. The only problem here as we see it, and as was identified by the High Court was that the donor should have been named as the plaintiff in the suit followed by the name of the respondent, so that upon the death of his mother, and after obtaining the letters of administration ad litem, the substitution would have been flawless. The appellants would not be before us telling us that the respondent could not substitute himself."

2. This, as we stated earlier, was a technicality and as pointed out by the learned judge, it was not fatal and was found to be curable under article 159 (2)(d) of the Constitution which provides that justice shall be administered without undue regard to procedural technicalities. We hold the same view. The argument proffered by the appellants to prevent the respondent from pursuing his mother's claim was flippant and the same was properly dismissed."

3. In a Motion brought before us said to be "...Pursuant to Section 3A a (sic) and 3B of the *appellate Jurisdiction Act* Cap 9 of the Laws of Kenya and All Other Enabling Provisions of the Law" the applicants Loise Wanjiru Meru, Kezia Wanjiru, Rowland Maina Muchiri and John Macharia Meru pray in the main that we be pleased to review the judgment delivered on 27th October, 2023 and order that the case against the appellants filed in the lower court at Murang'a as MURANGA CMCC No. 167 of 2015 has abated and that the respondent does not have the requisite locus standi to proceed with the matter. The application is supported by grounds on its face and by a supporting affidavit of the applicants' lawyer, Thomas Maina Njoroge, where it is stated that this Court made a positive finding in the said judgment:

> "...that the mother of the respondent one GRACE WANJIRU MERU now deceased should have been made a party to the suit filed in the lower court so that the substitution that the respondent purported to do in the lower court would be flawless..."

4. It is said that the finding goes to the root of the case filed in the lower court and is not a mere procedural technically as it is a substantial legal anomaly; that it is the appellants case that the grant of letters of administration Ad-litem did not cure the anomaly and the case filed in the lower court was dead on arrival, and that it is just to so order.

5. It is explained in the affidavit in support of the Motion that the respondent (John Migwi Meru) filed a suit in the lower court at Murang'a this being Murang'a CMCC No. 167 of 2015 by virtue of a power of attorney donated to him by his mother; that he did not therefore file suit in his personal capacity but as a donee; that he therefore only had locus to prosecute the case during the lifetime of the donor of Power of Attorney; that the donor died before the case could be heard:

> "...and it is a clear position of the law that the power of attorney died with the mortician as he had left the operating table as it were..." ;
>
> that the legal position was that there was no suit in the lower court and that the appeal was not flippant nor a technicality; that the deponent of the affidavit believes that the positive

finding made by this Court that the donor of the power of attorney should have been made a party to the suit filed in the lower court should have turned the tables against the respondent; that the suit filed at the lower court collapsed after the donor of the power of attorney died; that there was an error apparent on the face of the record:

...in matters law that necessitates a review and I urge this (sic) to hold and find as much and allow the appeal filed by the appellants ..."

6. The respondent filed a replying affidavit through his lawyer Onwonga William who does not explain whether the respondent was incapacitated or was unable to swear the affidavit. We observe here that lawyers engaged by parties in litigation should keep to their boundaries as professionals engaged by parties and let their clients depone to matters in issue in litigation.

7. Mr. Onwonga in response to the Motion in language not expected of a lawyer states:

" ... from the outset that the same died at the time when it was being drafted and it cannot be resuscitated by this Appellate Court..." ;

that this Court has pronounced itself on all issues of law that were raised by the applicants in the Memorandum of Appeal; that the court had found that failure by the respondent to name his deceased mother as plaintiff was not fatal to the case because it was curable under Article 159 of *the Constitution* of Kenya, 2010; that the applicants are asking this Court to sit on appeal against its own judgment; that there is no error apparent on the face of the judgment by this Court and that the application lacks merit and should be dismissed.

8. Both sides filed written submissions which we have seen and considered.

9. The power or jurisdiction to review final judgments of this Court was very rarely exercised pre-*The Constitution* of Kenya, 2010, (Constitution) this Court having been the final apex court in the land. *The Constitution* created the Supreme Court of Kenya, now the apex Court, but even with that creation, the path for a party to reach that court is very narrow, available to few parties who are able to reach the necessary threshold to be able to be heard by that court. The position even now is that we rarely review our judgments and only do so in a few exceptional circumstances. The power to review our judgments was considered by this Court in Benjoh Amalgamated Limited & Another v Kenya Commercial Bank Limited & Another [2014] eKLR where parameters for review were set out as follows:

" The case-law on the subject of review jurisdiction shows that two principles seem to be in competition. There is the "principle on finality" of litigation on the one hand which does not support review and there is "the justice principle" on the other hand which favours limited review predicated on the basis that the object of litigation is to do justice...

... It is our finding that this Court not being the final court has residual jurisdiction to review its decisions to which there is no appeal to correct errors of law that have occasioned real injustice or failure or miscarriage of justice thus eroding public confidence in the administration of justice. This is jurisdiction that has to be exercised cautiously and only where it will serve to promote public interest and enhance public confidence in the rule of law and our system of justice.

62. This Court will be reluctant to invoke its residual jurisdiction of review where, as here, there is laches or where legal rights of innocent third parties have vested during the intervening period which cannot be interfered with without causing further injustice."

10. The Supreme Court of Kenya considered the same issue and had this to say in Menginya Salim Murgani v Kenya Revenue Authority [2014] eKLR:

    (33) It is a general principle of law that a Court after passing Judgment, becomes functus officio and cannot revisit the Judgment on merits, or purport to exercise a judicial power over the same matter, save as provided by law."

11. We have looked at the judgment delivered by this Court which we are asked to review. We cannot see any error of law which has occasioned any injustice to any party. The Court in the judgment we are asked to review considered all issues. The suit at the magistrates' court is pending where there are lives issues to be determined, the appellants should litigate their issues before that court.

12. We find that there is nothing to be reviewed in the motion before us, the application has no merit and is dismissed with costs to the respondent.

DATED AND DELIVERED AT NYERI THIS 3RD DAY OF OCTOBER, 2025.

S. ole KANTAI

JUDGE OF APPEAL

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J. LESIIT

JUDGE OF APPEAL

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ALI – ARONI

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR.