



**In re Estate of Eunice Wanjiru Ngai-Imwe (Deceased) (Civil Appeal
67 of 2019) [2025] KEHC 14116 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14116 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL 67 OF 2019**

EM MURIITHI, J

OCTOBER 7, 2025

**N THE MATTER OF THE ESTATE OF EUNICE WANJIRU NGAI-IMWE
(DECEASED)**

BETWEEN

BEATRICE NDUNGURI MWAI 1ST APPELLANT

ALFRED NGAIRE NGAI-IMWE 2ND APPELLANT

AND

SICILY WAWIRA TITUS 1ST RESPONDENT

BANCY NJERI MURIUKI 2ND RESPONDENT

AND

PETER NGARI NDORO APPLICANT

RULING

1. The Court has considered the submissions on the matter by the parties as follows:

“Mr. Ngigi: I have seen the letter to Judicial Service Commission. My original client passed on in 2021. The current respondent filed a Limited Grant in Chief Magistrate E250 of 2022 at Kerugoya.

We filed summons dated 4.8.2022. 2nd Appellant opposed the application for substitution and filed a replying affidavit of 16.11.22 on 17.11.2022 and served on my Respondent.

On 24.1.2022, before Mwongo J application was argued orally relying on affidavit filed. Ruling deferred to 19.4.2023 when application was allowed.



Mr. Heyi filed a mention date 27.3.2023 and 2nd appellant filed a reply. Application dated 27.3.2023 was agreed on 19.10.2023.

Application was allowed on 7.12.2023 certifying that the 1st Appellant had been substituted and the 1st Respondent has also been substituted. The only person not substituted is 2nd Respondent.

No application for review to the two applications by party on 19.4.2023 and 7.12.2023.

What is pending is the matter, save the substitution of 2nd Respondents, and the hearing of the appeal HCCA 67 of 2029 from the decision of Hon. Barasa judgment on 30.8.2019. Record dated 29.1.2020. The Record is proper and we should take directions as to hearing. Appeal is admitted and trial court file is before the court.

On the consents dated 2.6.22 between 2nd appellant and 2nd respondent who is now deceased. I have always appeared for 2nd Respondents and I am not aware of how the consent was entered.

There is notice of appointment dated 8.11.2019 and I represent the 2 respondents.

At the initial hearing, the 2 appellants were represented by M/s Macharia Wambui who prepared the Record of Appeal. I have represented the 2nd Respondent all through.

Summons of 7.11.2019 by the appellants to stay execution as to the Respondent wanted to lodge the transmission documents on behalf of the Respondents.

I prepared grounds of opposition dated 8.11.2019 and on 18.11.2019, we agreed to dispose application by way of written submissions.

Appellant's consent filing submission dated 17.12.2019.

I filed submissions on 18.12.2019 appearing for the 2 Respondents and on 12.3.2020 a stay was granted on the condition that the appellants deposit Ksh.20,000/= as security.

The two applicants filed notice of intention to act in person dated 2.2.2019 and filed on 4.2.2019.

This is what formed the basis of the consent as the 1st Appellant/Applicant passed on, and the 1st Respondent also passed on and before the consent was made between the 1st appellant and 2nd Respondent (now deceased).

Any partial or other consent should have been between 2nd appellants and any firm as I was record for the 2nd Respondent all through.

The consent is not even adopted as the order of the court and I was not involved in the preparation of the same despite representing the 2nd Respondent all through. I pray for directions as to the hearing of the appeal.

If the party filed the consent is relevant it shall be raised in the appeal.

Respondents can raise it in the appeal.

Mr. Heyi:

I agree with Mr. Ngigi Gichoya.

Before presenting and taking directions on appeal the application by the 2nd Appellant need to be addressed by the court by a Ruling.



I am apprehensive that should directions on appeal be given before that definite ruling on the complaints by 2nd appellant, the appeal may be derailed again and the applicant may decide to approach the Judicial Service Commission by complaint.

Mr. Ngaimwe 2nd Appellant in reply

I agree with Mr. Heyi that the court should deal with the complaint.

I do not agree with Mr. Ngigi because I consider that the appeal had abated. The other came up recently after the application by Mr. Ngigi for respondents. I got to know that the application when I perused the file.

I did not appeal in the Court of Appeal but I wrote to the Chief Justice Chair of Judicial Service Commission and the Ombudsman. The response by the Ombudsman is in the handling of documents.

I am in conflict with the offices of the Chief Justice and Deputy Chief Justice.

Application were done after one year. The Advocate for the Respondents did not serve me. The applications were irregular. I was not served.”

Directions/Ruling

2. This is the decision of the Court by way Ruling/Directions initially scheduled for 10/7/2025. After priority typing of proceedings, the Court is now in a position to give directions in the further progress of the appeal.
3. By a copy of letter attached to the 2nd Appellant’s letter to the Chief Justice date-stamped 6/10/2025, the Court has learnt that 2nd Appellant’s complaint to the Judicial Service Commission against the previous trial judge in this matter was on 4/8/2025 rejected the complaint in terms as follows:

“Ref: JSC Pet.13/2024 4thAugust 2025

Alfred Ngairi Ngai-imwe

PO Box 6

0716-489730

Kianyaga

Dear Sir

Complaint Against Hon. Justice Richard Mwangi In Relation To KerugoyaHCCA No.67 of2019 - In The Matterof The Estate OfEunice Wanjiru Ngai-imwe(Deceased)

Reference is made to the above matter.

Kindly note that upon consideration, the Commission, at its meeting held on 29th July 2025, considered both your complaint and the Hon. Judge’s response dated 8th January 2025 and resolved that the complaint be dismissed for raising issues touching on the merits or otherwise of the court’s decision, which fall outside the mandate of the Commission.

The Commission observed that your complaint mainly touched on the application for substitution dated 27th March 2023, which was considered by the Hon. Judge and vide his ruling dated 19th April 2023, exercised his discretion in allowing the application.



The Commission further noted that your request to the Commission was to have the file placed before another judge and that Hon. Justice Mwongo had since recused himself from the conduct of the matter.

This therefore is to convey to you the above decision of the Commission in respect of your complaint against the above-mentioned Honourable Judge. Kindly be advised accordingly.

Yours faithfully

Hon. Winfridah B. Mokaya, CBS

Secretary

Judicial Service Commission

Cc The Chairperson

Judicial Service Commission”

4. In his submissions, Mr. Ngigi for the Respondents urged the court to give directions for the hearing of the appeal taking objection to the validity of the consent which was allegedly entered into by the Interested Party and one of the respondents, the 2nd Respondent now deceased pointing out that the alleged consent could not have been valid if entered inot by the party who he represented as he had such instructions.
5. Counsel for the Applicants Mr. Heyi had urged the Court to express itself on the Interested Party’s complaint to avoid the issue being raised again.
6. The Court does not find that it has jurisdiction, nor is it appropriate, to deal with a matter which is pending determination or which has been dealt with by the Judicial Service Commission, and there cannot be any appeal from the decision of a judge of this court to the Court of equal jurisdiction. If aggrieved the applicant ought to have filed an appeal to the Court of Appeal on the merits.
7. The 2nd Appellant has objected that the two applications for joinder of persons to represent the deceased respondents were not properly granted by the Judge as the 2nd appellant had not been served with the applications and they had been filed after the appeal had abated following the death of the parties.
8. This objection is a matter which may be taken in the course of the hearing of the appeal.

Orders

9. Accordingly, the Court finds that the matter is ready for hearing of the appeal and shall set it for hearing on a date to be fixed in consultation with the parties.
 10. In the meantime, the parties shall file submissions on the matter each taking 14 days beginning with the appellants.
 11. The 2nd appellant may in the course of hearing of the appeal urge the matter of the validity of the settling the matter by the consent alleged between the parties.
 12. Liberty to apply.
- Orders accordingly.

DATED AND DELIVERED THIS 7TH DAY OF OCTOBER 2025.

EDWARD M. MURIITHI



JUDGE

Appearances:

Mr. Ngigi Gichoya for the Respondents.

Mr. Heyi for the Applicants.

Mr. Ngai-imwe 2nd Appellant.

