

**IN THE COURT OF  
APPEAL AT NAIROBI**

**[CORAM: SICHALE JA (IN CHAMBERS)]**  
**CIVIL APPEAL (APPLICATION NO. 260 OF**  
**2019**

**BETWEEN**

**PATRICK NGUGI WAIRAGU (Administrator of the Estate of  
LAZARUS WANJOHI WAIRAGU-(Deceased)**

.....  
**APPLICANT**

**AND**

**COUNTY GOVERNMENT OF KAJIADO.....1<sup>ST</sup>  
RESPONDENT**

**JOSEPH GACHIGI MURAGE.....2<sup>ND</sup>  
RESPONDENT**

**PHILIP YEGO.....3<sup>RD</sup>  
RESPONDENT**

*(Being an Application for Revival of Appeal and Substitution of a  
Deceased Appellant in Nairobi Civil Appeal No. 260 of 2019)*

**RULING.**

1. By the Motion on Notice dated **29<sup>th</sup> May 2025**, brought pursuant to the provisions of **Rule 102 of the Court of Appeal Rules 2022**, and all other enabling provisions of the Law, **Patrick Ngugi Wairagu** (*hereinafter "the applicant"*) has invoked the Jurisdiction of this Court sitting as a Single Judge seeking the following orders:

***“a. Spent.***

***b. THAT this Honourable Court be pleased to revive and reinstate the Appeal herein, and in particular Civil Appeal No. 260 of 2019 for hearing and determination on merit.***

***c. THAT Patrick Ngugi Wairagu being one of the Administrators of the Estate of the late Lazarus Wanjohi Wairagu be substituted as the appellant in Civil Appeal No. 260 of 2019-Nairobi in the place of the said Lazarus Wanjohi Wairagu.***

***d. THAT the costs of this application be provided for.”***

2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant, who deposed *inter alia* that he was a son and one of the Administrators of the Estate of the deceased who passed away on 7<sup>th</sup> November 2020 and that Grant of Letters of Administration was issued to him on 21<sup>st</sup> August 2023.
3. That, during his lifetime, the deceased was pursuing the instant appeal but unfortunately the deceased and his wife had been estranged for more than 10 years prior to his death at the age of 75 years and considering that all their children were adults, the deceased lived on his own and in view of the above, none of the family members knew the existence of the instant appeal
4. He further deposed that during his lifetime, the deceased was quite keen in prosecuting the appeal to its logical conclusion

and it was only fair and just that that the appeal be  
revived and

reinstated for hearing and determination, considering that all the parties had complied with the directions given at the case management by filing submissions and authorities thereof and that the omission to substitute the deceased in good time was inadvertent and not deliberate.

5. There was no response on the part of the 1<sup>st</sup> ad 2<sup>nd</sup> respondents despite having been served with a copy of the hearing notice on **1<sup>st</sup> October 2025** via email at 10:21AM.
6. The motion was however opposed by the 3<sup>rd</sup> respondent vide a replying affidavit sworn on **28<sup>th</sup> June 2025**, where he deposed *inter alia*, that the application had been filed approximately three and a half (3<sup>1/2</sup>) years after the abatement of the suit, demonstrating a significant and inexcusable delay on the part of the applicant which amounted to laches.
7. He further deposed that the applicant's assertion that the deceased's family was unaware of the appeal was patently false and without basis as during the hearing of the case in the High Court, the deceased given his advanced age was on each occasion accompanied by his relatives and that in view of the

above, the deceased's family was well aware of the instant proceedings.

8. He further deposed that the Grant of Letters of Administration issued to the applicant was a Limited Grant which had not been confirmed rendering it incapable of conferring the necessary legal authority to institute or prosecute a suit on behalf of the deceased appellant's Estate.

9. The applicant in his submissions basically reiterated the contents in the supporting affidavit in support of the motion and submitted that the failure to substitute the deceased appellant in good time was not deliberate as the deceased's family was unaware of the existence of this appeal and that immediately they learnt of its existence, they initiated measures to replace the deceased and that further no prejudice would be suffered by any party if the application were to be allowed.

10. On the other hand, it was submitted for the 3<sup>rd</sup> respondent that the application was filed three and a half ( $3^{1/2}$ ) years after the abatement of the suit which delay was inexcusable and that based on the foregoing, the motion was unmerited and ought to

be dismissed with costs.

11. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the 3<sup>rd</sup> respondent's replying affidavit, the respective parties' submissions, the cited authorities and the law.

12. The applicant's motion is premised *inter alia* on the provision of **Rule 102 of the Court of Appeal Rules 2022**. The said Rule provides:

***"102. Death of party to appeal***

***(1) An appeal shall not abate on the death of the appellant or respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased person to be made a party in place of the deceased.***

***(2) If no application is made under sub-rule (1) within twelve months from the date of the death of the appellant or respondent, the appeal shall abate.***

***(3) The person claiming to be the legal representative of a deceased party or an interested party to an appeal may apply for an order to revive an appeal which has abated and, if it is proved that the legal representative was prevented by sufficient cause from continuing the appeal, the court shall revive the appeal upon such terms as to costs or otherwise as it deems fit.***

***(4) An application under sub rule (3) may be made before a single judge." (Emphasis added).***

13. Applying the provisions of Rule 102 of the Court of Appeal Rules 2022 (*supra*), to the circumstances of this case, can it be

said that the applicant was prevented by sufficient cause  
from

reviving the appeal? I do not think so for reasons that I will allude to shortly.

**14.** In the instant case it is indeed not in dispute that the deceased appellant passed away on **7<sup>th</sup> November 2020** and no application for substitution was made within 1 year of his demise and by operation of the law therefore, the suit abated on **8<sup>th</sup> November 2021**.

15. The applicant contends that the reason why he delayed in filing the instant application was because they were unaware of the existence of the present appeal. The 3<sup>rd</sup> respondent on the other hand contends that during the hearing of the suit in the Superior Court, the deceased appellant was always accompanied in court by his relatives as he was elderly, a fact that has not been controverted by the applicant.

16. Additionally, despite being issued with Limited Grant of Letters of Administration of Estate of the deceased on **21<sup>st</sup> August 2023**, it again took the applicant almost two years to file the instant motion which is dated **29<sup>th</sup> May 2025** and the applicant has not attempted to proffer any reasons for this delay.

17.The Grant further shows that it was due for confirmation on 5<sup>th</sup> February 2024 and the applicant has not informed the Court whether the same has since been confirmed or demonstrated efforts (if any), to have the same confirmed.

18.The upshot of my analysis therefore, is that the applicant has not demonstrated to the satisfaction of this Court that he was prevented by sufficient cause from filing the present application for substitution and revival of the appeal on time and accordingly, the applicant’s motion dated **29<sup>th</sup> May 2025**, is for dismissal.

19.Accordingly, the applicant’s motion dated **29<sup>th</sup> May 2025**, is without merit and the same is hereby dismissed in its entirety with no order as to costs.

It is so ordered.

**Dated and delivered at Nairobi this 7<sup>th</sup> day of November, 2025.**

**F. SICHALE**

.....

**... JUDGE OF  
APPEAL**

***I certify that this is a true copy of the original.***

***Signed***

**DEPUTY**  
**REGISTRAR.**