



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njeru v Frank Logistics Limited & 9 others (Civil Appeal (Application)  
E782 of 2021) [2025] KECA 2019 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KECA 2019 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E782 OF 2021  
M NGUGI, JA  
NOVEMBER 28, 2025**

**BETWEEN**

**FRANCIS NYAGA NJERU ..... APPELLANT**

**AND**

**FRANK LOGISTICS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**JUDY MUTHONI NGUGI ..... 2<sup>ND</sup> RESPONDENT**

**NAZMUDIN HABIB KASSAM KURJI ..... 3<sup>RD</sup> RESPONDENT**

**SWAMI CONTRACTORS LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**NAIROBI CITY COUNCIL ..... 5<sup>TH</sup> RESPONDENT**

**THE CABINET SECRETARY MINISTRY OF LANDS, HOUSING & URBAN  
DEVELOPMENT ..... 6<sup>TH</sup> RESPONDENT**

**THE CHIEF LAND REGISTRAR ..... 7<sup>TH</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 8<sup>TH</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE ..... 9<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 10<sup>TH</sup> RESPONDENT**

*(Being an application for substitution of the 3rd respondent in an appeal  
against the judgment of the Environment and Land Court of Kenya at Nairobi  
(K. Bor J. dated 12th November 2021 in ELC Petition No. 1524 of 2016)*

**RULING**

1. In the application dated 5<sup>th</sup> September 2025 brought under sections 3A and 3B of the *akn ke act 1977 15 Appellate Jurisdiction Act*, section 26 of the *akn ke act 2015 28 Court of Appeal (Organization and*



*Administration) Act*, and rules 20 and 102 of the Court of Appeal Rules 2022, the applicant, Parinbanu Nazmudin Kurji, the widow and legal representative of Nazmudin Habib Kassam Kurji (deceased), the 3<sup>rd</sup> respondent, seeks two substantive orders from the Court. First, that she be substitute in place of the deceased 3<sup>rd</sup> respondent in this appeal and, secondly, that upon substitution, the pleadings be amended accordingly.

2. The applicant also prays for any other orders necessary to meet the ends of justice, and for costs to abide the outcome of the appeal. The application is supported by an affidavit sworn by the applicant on 5<sup>th</sup> September 2025.
3. Briefly, the background to the application is that by the judgment in ELC Petition No. 1524 of 2016 filed by the 3<sup>rd</sup> respondent against the appellant and the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> -10<sup>th</sup> respondents, the Environment and Land Court (Bor J.), found, among other things, that the 1<sup>st</sup> respondent (the appellant being a director of the 1<sup>st</sup> respondent) had unlawfully invaded the 3<sup>rd</sup> respondent's petitioner's property, LR No. 1870 338, on Jalaram Road, Parklands, demolished the townhouse thereon and evicted the petitioner's family.
4. The court issued a permanent injunction restraining the appellant from interfering with the suit property, and awarded damages to the 3<sup>rd</sup> respondent. Aggrieved, the appellant lodged this appeal on 21<sup>st</sup> December 2021.
5. In her affidavit sworn on 5<sup>th</sup> September 2025, the applicant, Parinbanu Nazmudin Kurji avers that she is the widow of the late Nazmudin Habib Kassam Kurji and the duly appointed legal representative of his estate. That the 3<sup>rd</sup> respondent died on 29<sup>th</sup> June 2022 as evidenced in a death certificate annexed to her affidavit. She petitioned for a grant of letters of administration ad litem on 19<sup>th</sup> August 2022 for the limited purpose of defending suits, which were granted on 23<sup>rd</sup> August 2022 by the Family Division. She was, however, unable to extract the grant as the court file went missing. She states that her advocates wrote several letters to the Deputy Registrar of the Family Division on 12<sup>th</sup> September 2022, 29<sup>th</sup> March 2024 and 22<sup>nd</sup> October 2024 seeking assistance to trace the file.
6. She further states that in the intervening period, she filed a petition for a full grant of probate on 22<sup>nd</sup> July 2022, which was issued on 15<sup>th</sup> July 2024. A certificate of confirmation of grant was issued on 27<sup>th</sup> January 2025, appointing her as executrix of the estate.
7. The applicant avers that on 8<sup>th</sup> July 2025, the Deputy Registrar of this Court granted her leave to file a formal application for substitution. She avers that the delay in seeking substitution was occasioned by the missing file at the Family Division and the time taken to obtain a full grant of probate. She asserts that she diligently pursued the grant and promptly moved the Court once she was in a position to represent the estate.
8. It is the applicant's further averment that the appellant has, in the meantime, trespassed onto the suit property, harassing the caretaker and threatening to re-possess the land; that through her advocates, she issued a demand on 14<sup>th</sup> August 2025 requiring the appellant to desist, but the appellant's advocates replied that since there had been no formal substitution, she lacked capacity to act. She therefore seeks urgent substitution to enable the estate to defend the appeal and take steps to enforce the judgment of the ELC.
9. Neither the appellant nor the other respondents has filed a response to the application. The applicant has filed submissions dated 30<sup>th</sup> September 2025 in support of the application, which I have read and considered.



10. The substantive prayer sought by the applicant is for her substitution for the 3<sup>rd</sup> respondent, who died on 29<sup>th</sup> June 2022. In order for the Court to allow substitution of a party, there needs to be proof that the persons sought to be substituted are duly appointed legal representatives of the deceased-see *Mohamed & others v Patel & others* (Civil Appeal (Application) No. E250 of 2024).
11. In her affidavit, the applicant avers that following the death of the 3<sup>rd</sup> respondent three years ago on 29<sup>th</sup> June 2022, she applied and was granted letters of administration ad litem. She was not able to extract the grant ad litem, however, as the court file was missing. She has now obtained it, as well as probate of the will of the deceased, and is the executrix of the said will. She is therefore the legal representative of the deceased, and can therefore be substituted in place of the deceased 3<sup>rd</sup> respondent.
12. The question is whether there is a subsisting appeal to which the applicant can be made a party. Rule 102(1) of the Rules of this Court, 2022, provides that an appeal shall not abate on the death of an appellant or respondent but an order for substitution may be made upon an application for substitution of the deceased party. Under rule 102(2), if no application for substitution is made within 12 months from the date of death of the appellant or respondent, the appeal shall abate.
13. In the present case, the 3<sup>rd</sup> respondent died on 29<sup>th</sup> June 2022. The appeal, therefore, abated on 29<sup>th</sup> June 2023. That, however, does not preclude the parties from reviving the appeal. In *Resma Commercial Agencies v Ngata* (Suing as the Legal Representative of the Estate of Leah Wangui Ngata - Deceased) & another [2025] KECA 1398 (KLR), it was held that:

“In fact, there never is need for one to apply for enlargement of time because Rule 102 of the Rules of Court has a built-in mechanism to deal with delays. The rule is in the following terms;“102.(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.”

14. In the case before me, the applicant did not invoke the built- in mechanism referred to by the Court in the above matter, and the appeal therefore abated more than two years ago.
15. I have considered the prayers set out in the application dated 5<sup>th</sup> September 2025. While there is a prayer for substitution of the 3<sup>rd</sup> respondent, there is no prayer for revival of the appellant’s appeal against the 3<sup>rd</sup> respondent, and the Court is being asked to issue an order for substitution in an abated appeal. As was held in *Re Estate of Hussein Mwanza Etokho* (Deceased) [2025] KECA 1696 (KLR), where the applicant had failed to seek an order for revival of an abated appeal:

“In this case no prayer for revival has been made in the application. In the absence of such prayer, I would agree with the respondent that the application is fatally defective. In *Mbaya Ngulwa Vs Kenya Power Lighting Company Limited* [2018] eKLR, the Court stressed that abatement is by operation of Law and not by Judicial pronouncement. Courts have no jurisdiction to proceed with an abated suit unless it is revived. In *Soni Vs Mohan Dairy*



[1963] EA 98, the Court explained that abatement is a matter of substantive law once the statutory period lapses.”

16. There being no appeal in place in view of the provisions of rule 102(2), and the applicant not having applied for its revival, there is no basis for making an order for substitution of the 3<sup>rd</sup> respondent, as the Court would be doing so in a vacuum.
17. The deceased 3<sup>rd</sup> respondent has a judgment in his favour in the ELC in ELC Petition No. 1524 of 2016, enforcement of which the present applicant, as the legal representative of the deceased 3<sup>rd</sup> respondent, can pursue in that court, upon taking the appropriate steps.
18. Should the applicant still deem it necessary to do so, she can make an application for orders, simultaneously, for revival of the appeal against her and her substitution as the legal representative of the deceased 3<sup>rd</sup> respondent, against whom the appeal has abated, which can then be considered on its merits.
19. The application dated 5<sup>th</sup> September 2025 is, in the circumstances, struck out, but with no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF NOVEMBER 2025.**

**MUMBI NGUGI**

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**JUDGE OF APPEAL**

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

Signed

Deputy Registrar .

