

**IN THE COURT OF
APPEAL AT NYERI**

CORAM: KANTAI, LESIIT & ALI-ARONI, JJ.A.)

CIVIL APPEAL (APPLICATION) NO. 40 OF

2020 BETWEEN

MARIKO NDWIGA.....APPLICANT

AND

EDITH MUTHANJE.....RESPONDENT

(An application for extension of time for joinder of the respondent's legal representative against the Judgment of the Environment and Land Court at Embu (Y.M. Angima, J.) delivered on 16th January, 2020

in

E.L.C. Civil Appeal No. 19 of 2019.)

RULING OF THE COURT

The application that was before **Muchelule, JA.** sought for extension of time for joinder of the respondent's legal representative and that the Judge be pleased to enjoin **Nguu Gakindi** as the respondent's legal representative. The Judge considered the application and, finding no merit dismissed it in a ruling delivered on 20th December, 2024.

By a letter dated 27th December, 2024 **M/s Wokabi Mathenge & Company Advocates** applied under **rule 57(1)** of the **Court of Appeal Rules, 2022** for a reference to a full bench of the Court. That rule provides:

“57. Reference from decision of a single judge

(1) Where under the proviso to section 5 of the Act, any person, being dissatisfied with the decision of a single judge-

(a) ...

(b) in a civil matter, wishes to have any order, direction or decision of a single judge varied, discharged or reversed by the Court, that person may apply therefor informally to the judge at the time when the decision is given or by writing to the Registrar within seven days thereafter.

(2) At the hearing by the court of an application previously decided by a single judge, no additional evidence shall be adduced.”

It is thus a requirement that the request be made informally either to the Judge or within 7 days of the ruling or order, and no additional evidence is permitted upon such a reference.

The request by the applicant was made within 7 days of the ruling by the letter dated 27th December, 2024.

The application before the single Judge was expressed to be brought under **sections 3A, 3B** of the **Appellate Jurisdiction Act, Rules 4, 44, 55, 56, 102 Court of Appeal Rules** and all other enabling provisions of the law and it was prayed that the appeal be revived; that the court extends time for joinder of the respondent’s legal representative; that the court be pleased to join Nguu Gakindi as the legal representative of the estate of Edith Muthanje (deceased) as a party in the appeal and that costs be provided for. It was explained in support of the Motion and in a supporting affidavit

of Mariko Ndwiga that the court on 21st September, 2021 in PMCC Succession Cause No E062 of 2021 the Principal Magistrates Court at Runyenjes had appointed Nguu Gakindu as the administrator/legal representative of the estate of the respondent Edith Muthanje (deceased) to act for and on behalf of the estate; that the respondent died on 22nd September, 2020 and that it was a period of over 4 years since then and the suit had since abated; that the applicant was keen at having the appeal determined on merit; that the court was being requested to make the respondent's legal representative a party to the appeal to enable the parties ventilate on their respective cases. It was further deponed that advocates acting for the appellant had vide a letter dated 5th March, 2024 written a letter to the respondent's advocates asking whether a grant had been made in respect of the estate but that there was no response to the letter; that it had taken the appellant's advocate to engage in frantic effort and search to find out that a grant had been made to Nguu Gakundi on 21st September, 2021. The deponent stated at paragraphs 13 and 14 of the supporting affidavit:

“13. THAT I have also noticed that the property the subject of this appeal being Land parcel number Kyeni/Kigumo/2886 was in the schedule of assets of the estate of the deceased respondent. It was distributed to the respondent's advocates Mr. P.N. Mugo who has been referred to as Peter Njeru Mugo as a beneficiary of the estate of the deceased respondent (annexed hereto copy of the certificate of confirmation of Grant marked MN3).

14. THAT this could explain why the respondent's

advocates were/have been unwilling to provide

information despite request. The delay in getting this information led to the inability to substitute the deceased respondent and also occasioned the abatement of the appeal. This now requires the appeal to be revived.”

Attached to the application was a grant issued to Nguu Gakindu, in Principal Magistrate at Runyenjes Succession Case No. E062 of 2021 and a letter by an advocate to another enquiring whether letters of administration had been issued in respect of the estate of the deceased.

The Judge considered the application and found in material part in the ruling:

“5. No explanation has been offered by the applicant on the period between 21st September 2021 and 5th March 2024, on sufficient cause why the revival of the appeal and substitution of the respondent was not sought earlier.”

He dismissed the application.

We are aware that a reference from the decision of a single Judge is not an appeal, and we have to be careful how we deal with the reference.

When the reference came up for hearing before us on 27th May, 2025 the applicant was represented by learned counsel Mr. Mathenge. We were satisfied that counsel for the respondent had been served with a hearing notice for the day and there was no explanation for their absence. We allowed the reference to be urged.

Counsel for the applicant prayed that we allow the Motion so that the appeal could be revived and heard on the merits; that the appeal had abated after the respondent died; that it took time before the applicant could find out who was the legal representative of the estate of the deceased, and whether a succession cause had been filed. Counsel thought that the Judge had not considered depositions by the applicant at paragraphs 11, 12 and 13 of the supporting affidavit; that there was evidence of efforts by the applicant to get information.

We have considered what has been submitted before us by counsel for the applicant and have looked at the whole record of the Motion.

There was evidence through a letter by an advocate to their counterpart seeking information on whether succession proceedings had been taken after the respondent had died. The letter was not responded to.

We take it that, particularly in a rural setting where information may not be easily or readily available that it may not be easy to obtain information in a timely manner which could lead to delay in complying with timeliness for doing on time what the law requires.

The applicant was pleading before the Judge that he had not been availed information; that he wrote a letter that was not

responded to; that he made frantic efforts to obtain information which he did not get on time.

The Motion before the Judge was brought *inter alia*, under **sections 3A** and **3B** of the **Appellate Jurisdiction Act**. Those provisions are to the effect:

“3A. Objective of Act

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the appeals governed by the Act.**
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).**
- (3) An advocate in an appeal presented to the Court is under a duty to assist the Court to further the overriding objective and, to that effect, to participate in the processes of the Court and to comply with directions and orders of the Court.**

3B. Duty of Court

- (1) For the purpose of furthering the overriding objective specified in section 3A, the Court shall handle all matters presented before it for the purpose of attaining the following aims-**
 - (a) the just determination of the proceedings;**
 - (b) the efficient use of the available judicial and administrative resources;**
 - (c) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties;**

and
(d) the use of suitable technology.”

We think in the circumstances that the Judge should have exercised his wide discretion and allowed the Motion. There was reasonable explanation for delay which was not inordinate in the circumstances.

We allow the reference. The Motion dated 3rd September, 2024 is allowed. We make no order on costs.

Dated and delivered in Nyeri this 28th day of November, 2025.

S. ole KANTAI

.....
JUDGE OF APPEAL

J. LESIIT

.....
JUDGE OF APPEAL

ALI-ARONI

.....
JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR