

**IN THE COURT OF
APPEAL AT NYERI**

(CORAM: ALI-ARONI J.A. (IN CHAMBERS))

CIVIL APPEAL (APPLICATION) NO. 197 OF

2019 BETWEEN

JAMES MWANGI KANYI 1ST

APPELLANT ZELIPHA WAMBUI

2ND APPELLANT AND

**ROBERT NJOROGE 1ST
RESPONDENT**

**MARIA THAYU GROUP 2ND
RESPONDENT**

*(Being an application for substitution of the deceased appellants,
and for revival of the appeal)*

RULING

- 1.** Before the Court is an application by way of a notice of motion dated 31st July 2025, brought ***under rules 4, 102(1), (2), (3) & (4)*** of the Court of Appeal Rules, 2022 (the Rules), by ***Anastacia Wanjiru Mwangi***, the administrator of the Estates of James Mwangi Kanyi and Zelipha Wambui Kanyi, seeking enlargement of time for the substitution of the deceased appellants with the applicant; and for the revival of the appeal.

2. The application is based on the grounds outlined on the face of the application and averments in the supporting affidavit of the applicant, Anastasia Wanjiru Mwangi sworn on 31st July 2025, wherein she stated that she is the wife of the 1st appellant and

a daughter in law of the 2nd appellant; and an administrator of the estates of both the 1st and the 2nd appellant, who passed away on 30th December 2021 and 24th July 2024 respectively; that after the death of the 1st appellant, who was the son of the 2nd appellant, the 2nd appellant proceeded with the appeal and filed her submissions on 11th May 2023, with the hope of having the appeal determined; she also passed away on 11th July 2024, while the appeal was still pending.

3. The applicant further deposed that following the death of both appellants, the family was thrown into confusion; the appeal involves proprietary rights to L.R. Ruguru/Kiamariga/1876, which the applicant and her family occupy; extending the time within which to substitute the appellants will not cause any prejudice to the respondent; allowing her to replace the deceased appellants will enable her revive the appeal.
4. Learned counsel for the applicant filed submissions dated 26th November 2025, and rehashed the grounds laid out in the supporting affidavit. Counsel further submitted that by 31st July 2025, when the application was filed, a period of twelve months had elapsed since the death of both deceased appellants; consequently, the appeals by both appellants abated by the operation of law.
5. Counsel explained that before her death, the 2nd appellant had complied with the Court's directions by filing

submissions on the main appeal, dated 11th May 2023. The 2nd appellant was elderly (97 years) and had decided to proceed with the appeal

without replacing the son (1st appellant). With the subsequent death of the 2nd appellant, there was confusion within the family, leading to a time lapse as the family grappled with the loss. Counsel further argued that granting the orders will cause no prejudice and will, on the contrary, bring the appeal to its conclusion.

6. The respondent has neither filed a response to the application nor submissions despite being served with a hearing notice.
7. I have considered the application, the affidavit in support and the submissions. The issues for determination are whether to extend the time within which to substitute the deceased with the applicant, and whether the appeal should be revived.
8. On the prayer for enlargement of time, this Court in ***Resma Commercial Agencies vs. Ngata (Suing as the Legal Representative of the Estate of Leah Wangui Ngata - Deceased) & another (Civil Appeal (Application) 16 of 2019) [2025] KECA 1398 (KLR)*** held that:

“3 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.”

4. It is clear from the text of the rule that upon the death of a party to an appeal, substitution is required to be obtained within 12 months, failing which the appeal abates, as happened in this case.

5. Such abatement is not necessarily the end of the story, however: the person claiming to be the legal representative of the deceased party, or an interested party to the appeal, may apply for an order to revive the abated appeal, as the applicant has done by this application.

6. Revival of an abated party is not automatic, however: the application is required “[to prove] that the legal representative was prevented by sufficient cause from continuing the appeal.” Should such proof be

furnished, the Court shall revive the appeal and it may, in doing so, impose

terms as to costs, or otherwise, at its discretion.”

In **Njoroge & Another vs. Kamau (Deceased) & Another (Civil Appeal (Application) E051 of 2019) [2024] KECA 806 (KLR)**, this Court held that; -

“A prayer for revival of an appeal which has abated cannot be allowed as a matter of course or as of right. An applicant seeking an order of revival must demonstrate to the satisfaction of the court that he or she was prevented by sufficient cause from making an application for substitution before the abatement of the appeal.”

In **Ngari vs. Murithi (Deceased) Substituted by Wanjira Ngari & Another (Civil Appeal (Application) 140 of 2018) [2025] KECA 358**, this Court held that; -

“5. Rule 102(3) of the Court of Appeal Rules 2022 provides as follows:

The person claiming to be the legal representative of a deceased party or an interest 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 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.” (emphasis mine)

6. The above provision is clear. The legal representative of deceased’s estate is enjoined to apply to substitute a deceased party in the event the cause of action or the proceedings pending in

Court survive the deceased party.”

9. As is seen from the provision of **rule 102** of the Rules and the above-quoted cases, there is no need to seek the enlargement of time when an appeal has abated after 12 months of the death of a party. The only requirement for substitution and revival is that the legal representative demonstrate sufficient cause for the delay in substitution, thereby abating the appeal. The applicant herein has given reasons for the delay sufficiently, and I do agree that justice of the matter calls for her substitution and revival of the appeal.
10. The applicant is therefore substituted in place of the deceased appellants and the appeal duly revived.
11. The application was not opposed; I make no order for costs.

Dated and delivered at Nyeri this 11th day of December, 2025.

ALI-ARONI

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JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR