



REPUBLIC OF KENYA



**M'rintari v M'rintari (Civil Appeal (Application) 74 of 2018)  
[2025] KECA 2230 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KECA 2230 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) 74 OF 2018  
A ALI-ARONI, JA  
DECEMBER 19, 2025**

**BETWEEN**

**M'MUGUNA M'RINTARI ..... APPELLANT**

**AND**

**JAMES M'NGARUTHI M'RINTARI ..... RESPONDENT**

*(Being an application for substitution and reinstatement of the appeal)*

**RULING**

1. Before the Court is an application by way of a notice of motion dated 12<sup>th</sup> August 2025 brought under rule 102 of the Civil Procedure Rules 2022, I take it that the applicant intended to bring the application under the Court of Appeal Rules ('the Rules'), seeking for substitution and reinstatement of the appeal.
2. The application is predicated on the grounds on the face of the application and rehashed in the supporting affidavit sworn by the applicant, Stephen Kithinji M'Muguna on 12<sup>th</sup> August 2025, where he states that he is one of the children of the late M'Muguna M'rintari (deceased) appellant herein who died on 25<sup>th</sup> June 2023; the appeal remains undetermined; after the appellant passed on the family was disunited and had several issues to sort out; it was only after the deceased's death that they were alerted that this case had not been determined; it took a while and eventually the family agreed to have the applicant obtain temporary letters of administration together with his sister, Rodah Makena; the family has now engaged an advocate and has instructed counsel to apply for revival and substitution; submissions are on record and appeal ready to be heard; there is need for substitution and for the appeal to be revived so that the appeal may be determined.
3. In objecting to the application the respondent Hellen Kinya Kabiti, swore a replying affidavit dated 11<sup>th</sup> December 2025, and states that the appeal had already abated on the part of the respondent (James M'Ngaruthi Rintari) because he had died on 13<sup>th</sup> February 2023; the applicant was fully aware of the



abatement but took no action; since the abatement, the court orders have been fully implemented, effectively concluding the litigation; further the applicant failed to provide a sufficient explanation for the nature of the dispute causing the delay or any cogent issues to warrant the revival of the suit after four years of inaction; and therefore the application should be dismissed.

4. I have considered the application and the replying affidavit. The issue for determination is whether to allow substitution and revival of the appeal. A legal representative of a deceased appellant or respondent is required to seek to be substituted as a party within twelve months of the party's death and in the event this is not done and the appeal abates sufficient reasons ought to be given why the appeal should be revived. Rule 102 of the Rules provides as follows; -

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.

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

“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.

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

“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”.

6. In his bid to explain the delay the applicant stated that though the deceased appellant died in 2023, at the point of his death the family was not in the know of the appeal's progress. When they got the information they had family issues which needed to be sorted out first and thereafter the applicant and his sister obtained a grant which now permits them to seek to be substituted; and to seek for revival of the appeal.

7. The grant was obtained on 22<sup>nd</sup> January 2025, this application was filed on 12<sup>th</sup> of August 2025. The deceased died slightly more than 2 years ago. Although no details are given of the family issues



mentioned. The court is not blind to the fact that death of a loved one takes a toll on the bereaved family and issues of succession take a while to be discussed and resolved. I am thus satisfied by the explanation given for the delay. The respondent mentions that the orders of the court have been fully implemented, yet again does not give details of the orders said to have brought litigation to an end.

8. In the end I allow the application and substitute the applicant and his sister in place of the deceased. The appeal is equally revived. Since directions had already issued the appeal be listed for hearing in the next term.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF DECEMBER, 2025.**

**ALI-ARONI**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

