

**IN THE COURT OF
APPEAL AT NAIROBI**

(CORAM: W. KARANJA, MUMBI NGUGI & MUCHELULE, JJ.)

A) CIVIL APPEAL NO. 311 OF 2019

BETWEEN

JANE NJERI MUNGAI.....1ST APPELLANT
MARTIN MUNGAI.....2ND APPELLANT
JOSHUA MBUGUA A.K.A
PETER MBUGUA NGUGI.....3RD APPELLANT

AND

SUSAN WANJIRU A.K.A
SUSAN NAIPONO LETUYA.....1ST
RESPONDENT
ANTHONY PETER MBUGUA.....2ND
RESPONDENT

*(Being an appeal from the judgment of the High
Court at Nairobi
(W.M. Musyoka J.) dated 30th June
2017 in*

High Court Succession Cause No. 1574 of 2006

And

*the ruling of the High Court at
Kajiado (Nyakundi J.) dated 18th April 2018
in*

Succession Cause No.45 of 2017)

**RULING OF THE
COURT**

1. This appeal relates to the estate of **Samuel Ngugi Mbugua** (Deceased). It is presented on the basis of an Amended Record of Appeal dated 29th January 2025. This Amended Record of Appeal was filed pursuant to orders of this Court (Achode J.) issued in a ruling dated 24th January

2025, pursuant to an application by the appellants dated
11th December 2024.

2. In that ruling, the appeal, which had abated following the demise of the original respondents, **Allan Gitau Mbugua** and **Gichanga Kimani** (indicated in the initial Record of Appeal, it would appear erroneously, as **Gichage Kimani**), sometime in or prior to 2022. In the application, the appellants sought substitution of the deceased respondents with the current respondents, **Susan Wanjiru** A.K.A **Susan Naipono Letuya** and **Anthony Peter Mbugua**.
3. Herein lies one of the three main problems besetting this appeal, which became apparent at the hearing of the appeal before us on 19th May 2025 in which learned counsel, Ms. Kisotu, holding brief for Mr. Makumi, appeared for the appellants. Learned counsel, Mr. Kamau, stated that he was appearing for the respondents. However, from the contents of the submissions dated 8th May 2025 filed by the firm of Maina, Omore & Mwaura, **'Advocates for the respondent'**, it is apparent that Mr. Kamau was representing the 2nd respondent, **Anthony Peter Mbugua**.
4. The submissions dated 7th August 2020 filed on behalf of the initial appellants, **Jane Njeri Mungai, Martin**

Mungai, Joshua Mbugua A.K.A Peter Mbugua Ngugi
and **Susan Wanjiru A.K.A Susan Naipono Letuya** (now
the 1st

respondent) show that the 1st respondent, like her mother and siblings, was dissatisfied with the decision of Musyoka J.

5. That being the case, as an appellant against the decision made in favour of the original respondents, **Allan Gitau Mbugua** and **Gichanga Kimani**, the executors of the will of the deceased, can **Susan Wanjiru A.K.A Susan Naipono Letuya** be substituted as a respondent in the appeal against the said decision? We think not.
6. The second problem relates to the filing of a single appeal against two distinct decisions. The decision of Musyoka J. dated **30th June 2017** in **High Court Succession Cause No. 1574 of 2006** related to an application by the 1st appellant, **Jane Njeri Mungai**, who claimed that she was the second wife of the deceased, for revocation of the grant issued to the executors of his Will. The 1st appellant contended before the High Court that the said Will was not valid as the deceased was not mentally competent to make it due to the state of his health at the time the Will was alleged to have been made.
7. The trial court (Musyoka J.) found no merit in the application for revocation, and dismissed it. Dissatisfied,

the appellants, who included the current 1st respondent,

Susan Wanjiru

A.K.A **Susan Naipono Letuya** as the 4th appellant, filed a notice of appeal dated 10th July 2017 against the said ruling.

8. The ruling of Nyakundi J. dated 18th April 2018 in **Succession Cause No.45 of 2017** related to an application by the 1st appellant, **Jane Njeri Mungai**, seeking provision for herself and her children, the 2nd and 3rd appellants, **Martin Mungai** and **Joshua Mbugua** A.K.A **Peter Mbugua Ngugi**, and the 1st respondent, **Susan Wanjiru** A.K.A **Susan Naipono Letuya** as dependants of the estate of the deceased. In his decision, Nyakundi J made provision for the 1st appellant of one (1) acre out of the estate of the deceased. The appellants were dissatisfied with this ruling also, and they filed a notice of appeal dated 15th November 2018 intimating their intention to appeal against the said ruling.
9. Two different decisions, rendered on two different dates, before two different courts, with respect to different claims, and with two different notices of appeal. The appellants have, however, filed a memorandum of appeal dated 4th July 2019 challenging both decisions. Therein lies the second problem with the present appeal.

10. Under rule 84(1) of the Rules of this Court, the appeal against each of the two decisions should have been filed within 60

days from the date of the notice of appeal, unless the proviso to rule 84(1) was applicable. There is a Certificate of Delay dated 11th June 2019 in respect of the notice of appeal in **Kajiado Succession Cause No. 45 of 2019**, but none in respect of the decision of Musyoka J. dated 30th June 2017 in **Nairobi High Court Succession Cause No. 1574 of 2006**. Thus, even were we to accept that the appellants can file one appeal in respect of the two distinct decisions in the circumstances before us, there can be no competent appeal in respect of the decision of Musyoka J dated 30th June 2017.

11. Finally, at the hearing of the appeal, it emerged that the 2nd appellant, **Martin Mungai**, was deceased. Ms. Kisotu, who was appearing for the appellants, stated that she was not aware that the 2nd appellant was deceased, though learned counsel (for the 2nd respondent), Mr. Kamau, informed the Court that he had formally written to counsel for the appellants regarding the death of the 2nd appellant.
12. Considering that the 1st, 2nd and 3rd appellants and the 1st respondent are all related, the 1st appellant being the mother of the 2nd and 3rd appellants and the 1st respondent, it is a matter of concern that the issue of the death of the

2nd

appellant was not brought to the attention of their counsel, and appropriate action taken to regularize the appeal.

13. All of these matters, more so the complexities regarding the competence of the common appeal on two different decisions, the competence of the appeal against the decision of Musyoka

J. dated 30th June 2017, and the question of the capacity of the 1st respondent, **Susan Wanjiru A.K.A Susan Naipono Letuya** to be both an appellant and a respondent in the same appeal, thereby taking diametrically opposed positions on the issues in contention, render the appeal before us incompetent.

14. We have pondered the course of action, in the circumstances, that best meets the ends of justice in the matter. We are cognizant of the fact that the appeal relates to a succession matter in which the appellants are aggrieved by decisions made with respect to the estate of the deceased. We have deliberately not addressed ourselves to the merits of the appeal so as not to close the door of justice on the appellants and the 1st respondent to agitate their grievances, should they wish to do so.

15. In view of the difficulties we have identified above, we are

satisfied that in the circumstances, the best course of action

is to strike out, which we hereby do, the appellants' appeal, to enable them go back to the drawing board and follow appropriate procedural paths to enable them agitate their grievances against the two impugned decisions.

16. In view of the nature of the matter, we make no order as to costs.

Dated and delivered at Nairobi this 30th day of January, 2026.

W. KARANJA

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JUDGE OF

APPEAL MUMBI

NGUGI

.....

JUDGE OF APPEAL

A.O. MUCHELULE

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.