



Machina v Kaberere (Civil Appeal 5 of 1983) [2026] KEHC 661 (KLR) (26 January 2026) (Ruling)

Neutral citation: [2026] KEHC 661 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL 5 OF 1983
DKN MAGARE, J
JANUARY 26, 2026**

BETWEEN

JOHN MACHARIA MACHINA APPELLANT

AND

JOHNSON KABERERE RESPONDENT

RULING

1. This matter was filed as an appeal from Karatina Succession Cause No. 96 of 1979. This was a decision by the Hon. learned District magistrate J.G. Gichimu on 14.10.1982. The same appears as active on the CTS. The appeal was admitted on 16.4.1983, and then it went to sleep.
2. The Respondent filed an application for dismissal on 30.5.1989. However, the same does not appear to have been prosecuted. The Respondent subsequently changed advocates on 27.6.2012. No further action was taken in the matter until it was placed before me on 18.4.2025.
3. The matter was thereafter placed before the Court on 17.9.2025, at which point I directed that I peruse the court file and that service be satisfied that the matter was still active and no party was overreaching. Unfortunately, the matter did not proceed on 5.11.2025. There does not appear to be any family member interested in pursuing the matter.
4. My task is a simple one, that is, to determine whether the appeal has abated. The appellant died on 27.7.2017. Consequently, there should have been substitution by 27.7.2018. It is now 9 years later, and nothing has been done. Order 24 Rule 9 provides as follows:

In the application of this Order to appeals, so far as may be, the word “plaintiff” shall be held to include an appellant, the word “defendant” a respondent, and the word “suit” an appeal.
5. The above order means that the provisions of Order 24 rule 22(1) of the Civil Procedure Rules are relevant to an appeal. The same provides as follows:



1. Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.
2. Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:

Provided the court may, for good reason on application, extend the time.

6. In the present matter, no application for substitution was made within the prescribed period or thereafter. As at the time the matter was placed before this Court on 18.4.2025, the appeal had therefore abated by operation of law. There is no evidence of any interested family member seeking to continue the proceedings. Consequently, the appeal is hereby dismissed as having abated.
7. The appellant is deceased. There is no other party in the matter. Therefore, each party shall bear its own costs.

Determination

8. Consequently, I make the following orders
 - a. The suit is abated.
 - b. Each party shall bear its own costs.
 - c. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 26TH DAY OF JANUARY, 2026. RULING DELIVERED, EX TEMPORE, THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:

Mr. Wambugu for the Applicant.

Applicant present.

Court Assistant – Michael

