



Chege & 2 others (Administrators of the Estate of Chege Kirumba - Deceased) v Wakigo & 2 others (Civil Application 22 of 2020) [2026] KECA 233 (KLR) (13 February 2026) (Ruling)

Neutral citation: [2026] KECA 233 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION 22 OF 2020
SG KAIRU, K M'INOTI & P NYAMWEYA, JJA
FEBRUARY 13, 2026**

BETWEEN

**JOHN KIMBUKU CHEGE 1ST APPLICANT
JAMES GITAU CHEGE 2ND APPLICANT
HARRISON MUCHENE CHEGE 3RD APPLICANT
ADMINISTRATORS OF THE ESTATE OF CHEGE KIRUMBA - DECEASED**

AND

**DANIEL KAHARA WAKIGO 1ST RESPONDENT
SALOME WANGUI CHEGE 2ND RESPONDENT
PUBLIC TRUSTEE 3RD RESPONDENT**

(Application to strike out the Notice of Appeal dated 13th December 2019 from the ruling and order of the Environment and Land Court at Nairobi (Komingoi, J.) dated 11th December 2019 in ELC App. No. 1 of 2018)

RULING

1. The Motion determined by this ruling is dated 5th February 2020 and asks the Court to strike out with costs the respondents' Notice of Appeal dated 13th December 2019 (erroneously stated in the heading of the application as 11th December 2019, a day before delivery of the impugned ruling).

The Motion is substantively based on rules 42 and 84 of the Court of Appeal Rules, 2010 which were in force then. Presently, under the operative Court of Appeal Rules 2022, those rules are rules 44 and 86, respectively. There is no material difference between the two sets of rules as rendered in the former and the current rules, but to the extent that the 2022 rules have no retrospective effect, this ruling is based on the terms of the former rules.



2. By dint of rule 84 and subject to making the application within thirty days of service of the impugned notice or record of appeal, a party affected by an appeal was (and still is) entitled to apply to strike out a notice or record of appeal if no appeal lay or the respondent had failed to take essential steps within the prescribed time.
3. The application before the Court is made on the grounds that no appeal lies, because the parties against whom the appeal has been preferred do not exist in law. It is contended that Salome Wangui Chege (Wangui), the 1st respondent in the appeal, has been deceased since 15th June 1999; that she has never been substituted; that the suit from which the appeal arises had abated; and that the Public Trustee, the 2nd respondent in the appeal, was removed as administrator of the estate of the deceased, to which the appeal relates. The applicants contend that in the circumstances, no appeal lies in law against non-existent parties and therefore the notice of appeal should be struck out. That is the sum of the arguments founded on the lengthy, 49 paragraph affidavit sworn on 5th February 2020 by Simon Machieya Chege, one of the administrators of the estate of the deceased, and the submissions of Mr. Miyare, the applicants' learned counsel.
4. The 1st respondent, Daniel Kahara Wakigo (Wakigo), opposed the application vide an equally lengthy replying affidavit sworn on 13th April 2020, in which he traces the history of the dispute and attempts to justify the validity of the appeal. That affidavit was supplemented by written submissions dated 23rd July 2025, which were highlighted by his learned counsel, Mr. Sumba. Wakigo also takes issue with the competence of the application to strike out the notice of appeal, arguing that it has not been made within the prescribed time. He also submits that he applied for and obtained leave to appeal from ELC, which he thinks cured any defects pointed out by the applicants.
5. Not surprising, there was no appearance for Wangui or the Public Trustee, though there was due service through their last known addresses.
6. We have carefully considered the application before the Court.

We think there is no merit in Wakigo's contention that the application is incompetent because it was made outside the 30 days proscribed by rule 84. The notice of appeal was served upon the applicants' advocates on 17th December 2019 and the application to strike it out was filed on 5th February 2020. Although a casual computation of time suggests that the application was made outside the prescribed period of 30 days, account must be taken of the Court's Christmas recess, which runs from 21st December to 13th January. If the recess period is discounted, it is clear that the application was filed within the prescribed time.
7. Secondly, we do not think that an abated suit can be revived by mere grant of leave to appeal. An abated suit can only be revived by an order of the court consequent upon an application for that express purpose and made within the prescribed time.
8. Turning to the merits of the application, we take note that the appeal before this Court is a second appeal from the ruling of the Environment & Land Court at Nairobi (Komingoi, J.) dated 11th December 2019. In that ruling the ELC upheld a preliminary objection by the present applicants and struck out an appeal by the Wakigo against Wangui and the Public Trustee. In the appeal, Wakigo was challenging the ruling of the Senior Resident Magistrate's Court in Nairobi dated 10th January 2018 which had declined to reinstate his suit against Wangui and the Public Trustee after a delay of over 18 years. Alternatively, the learned judge indicated that she would have summarily rejected the appeal under section 79B of the *Civil Procedure Act*.



9. The ELC ruling was based on the finding that the ruling of the subordinate court from which the first appeal arose was non-existent because the suit in that court had abated long before the ruling in question and had not been revived. The applicants now contend that is still the case as regards the appeal in this Court.
10. It is common ground between the parties that the 1st respondent in the appeal, Wangui, died on 15th June 1999 long before the impugned ruling of the subordinate court. There was no substitution. In addition, the Public Trustee, the 2nd respondent in the appeal, who was once the administrator of the estate of the deceased, was removed as such on 4th November 2013 and no longer had any standing in the matter. In place of the Public Trustee, the present applicants were appointed administrators of the estate of the deceased.
11. As already pointed out, Wangui died on 15th June 1999 and was not substituted. By dint of Order 24 rule 3 of the Civil Procedure Rules, if an application for substitution of a deceased defendant by his or her personal representative is not made within one year after death of that party, the suit abates against the deceased party. The suit against Salome therefore, abated on 14th June 2000. Order 24 rule 7 allows for revival of an abated suit. No application was made to revive the suit against Wangui.
12. The effect of an abated suit is that it ceases to exist in law, unless and until it is revived. In *Wallace Kinuthia v. Anthony Ndung'u Muongi & 3 Others* [2013] eKLR, Nyamweya, J. (as she then was), held as follows:

“The effect of a suit that has abated is that it ceases to exist in law.”
13. That view was reiterated by this Court in *Eunice Wairimu Muturi & Another v Margaret Njeri Gachoka & 3 Others*, CA No. 213 of 2016 where the Court held:

In our view, under Order 24 rule 3(2) of the Civil Procedure Rules, a suit that has abated ceases to exist as a suit in law, unless it is otherwise revived by an order of the court in accordance with Order 24 rule 7(2).
14. See also *Said Sweilem Gheithan Saanum v. Commisioner of Lands* [2015] eKLR; *Leonard Mutua Mutevu v. Benson Katela ole Kantai* [2014] eKLR; *Kenya Farmers Co-operative Union Ltd v. Charles Murgor* [2005] eKLR; *John Chege Mwangi & 3 Others v. Odabiah Kiritu Methu* [2012] eKLR and *Wallace Kinuthia v. Anthony Ndung'u Muongi & 3 Others* [2013] eKLR.
15. We are persuaded that by the date of the impugned ruling of the subordinate court which led to the first and now the second appeal, there was no suit capable of being determined or appealed. On the same vein, the Public Trustee has no standing in the appeal, his mandate as regards the estate of the deceased having ceased on 4th November 2013. (See *Trouistik Union Insurance & Another v. Jane Mbeyu & Another* [2008] KLR).
16. For the foregoing reasons, we are persuaded that the applicant's motion has merit. Accordingly, we allow the same and strike out Wakigo's notice of appeal dated 13th December 2019, with costs to the applicants. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF FEBRUARY 2026.

S. GATEMBU KAIRU, FCIArb, C.Arb.

.....

JUDGE OF APPEAL



K. M'INOTI

.....

JUDGE OF APPEAL

P. NYAMWEYA

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

