

**IN THE COURT OF APPEAL
AT NAIROBI**

**(CORAM: MUMBI NGUGI,
JA)**

CIVIL APPEAL (APPLICATION) NO. 146 OF 2019

BETWEEN

PAUL NJAU NJENGA.....APPLICANT

AND

**HANNAH WANJIKU NJENGA
(DAUGHTER) (DECEASED).....RESPONDENT**

(Being an application for extension of time to file and serve a Notice of Motion for substitution of the deceased respondent and for revival of the appeal arising from the judgment of the High Court of Kenya at Nairobi (Nambuye, J.) dated 8th July 2010

in

Succession Cause No. 1500 of 1995)

RULING

- 1.** From what I can gather from the documents before the Court, the applicant/appellant, **Paul Njau Njenga** and the respondent **Hannah Wanjiku Njenga** (deceased) are step- siblings, the children of **Peter Njenga Ringiria**, the deceased to whose estate the succession cause before the High Court pertained. It appears that the mother of the applicant, who was the second wife of the deceased, was also known as Hannah Wanjiku Njenga. This would explain the reference in the proceedings to the respondent as **“Hannah Wanjiku Njenga (Daughter).”**

2. The appellant was dissatisfied by the decision of Nambuye J. (Rtd.) rendered in July 2010, and he filed the present appeal. The matter, however, did not proceed to hearing, and it would appear that the respondent died on 16th January 2024 before the appeal could be heard. Under the provisions of rule 102(1) of the Rules of this Court, the appeal against her abated twelve months from that date, 15th January 2025.
3. The appeal has come up before the Court several times in the last year but could not proceed, for a variety of reasons, including the demise of the respondent, the fact that she had not been substituted, and the fact that the appeal had abated after the expiry of one year from the date of death of the respondent.
4. The applicant has now filed the application dated 24th June 2025 and seeks, among other orders, leave to amend an earlier application dated 6th May 2025. The application is brought pursuant to an order of this Court made on 16th June 2025 in which the Court noted that while the applicant had, in the application dated 6th May 2025, sought substitution of the respondent, the application could not proceed as the appeal had abated and there was no prayer

for its revival.

5. In the application dated 24th June 2025, the applicant seeks an order that he be granted leave to amend his application for substitution and to add a prayer for revival of the appeal; and to be granted leave to file additional statements and documents in support of his case. He has annexed his application dated 6th May 2025, amended on 24th June 2025, with the prayers that the respondent be substituted with her son, **Peter Gichuru Meja**, the proposed respondent who has shown interest in the proceedings; that in the event the proposed respondent fails to respond to the application, the applicant be allowed to fully administer the estate; and that the letters of administration be rectified to reflect the change.
6. The application is supported by an affidavit sworn by the applicant in which he states that he is the surviving administrator of the estate of the deceased; that he seeks to have one Peter Gichuru Meja, a son of the deceased respondent, Hannah Wanjiku Njenga, substituted as the respondent; and for the revival of the suit; and that the said Peter Gichuru Meja has expressed an interest to be substituted as the respondent.

7. I note from the documents attached to his affidavit that the said **Peter Gichuru Mejah** and **George Kennedy Mejah** have filed a rather strange application in **Succession Cause No. 1500 of 1995 (In the matter of the Estate of Peter Njenga Ringiria)** praying to be granted ***“letters of administration of our late mother Hannah Wanjiku Njenga properties given to her by this court as per scanned documents attached, namely L.R. No. 460 Ruthimitu 1.5 acres and L.R. T 44 Ruthimitu ½ share”***.
8. I appreciate that the appellant and the deceased respondent's sons are laymen, acting in person, which explains the nature of and the difficulties arising from the applications before this Court and the High Court. Regarding the application before me, it is not possible to make an order of revival of the appeal without making an order of substitution of the respondent. At the same time, an order for substitution of the respondent cannot be made to a party who has not obtained grant of letters of administration to her estate.
9. This later aspect is what **Peter Gichuru Mejah** and **George Kennedy Mejah**, sons of the deceased

respondent, are trying to do, as indicated in the documents annexed to the affidavit

of the applicant in support of his application which I have alluded to earlier. Unfortunately, they are trying to obtain letters of administration to her estate within the succession cause in respect of their grandfather's estate, which is not possible. They have to file a separate succession cause to obtain letters of administration intestate in respect of her estate.

10. It is, therefore, not possible to grant the orders sought in this application. The applicant, John Njau Njenga, in addition to praying that the respondent be substituted with her son, Peter Gichuru Meja, who has shown interest in the proceedings also prays, in the alternative, that he be allowed to proceed with the matter as the substituted representative of the estate of the respondent, **Hannah Wanjiku Njenga (daughter)**, the respondent herein; and that in the event that the proposed respondent fails to respond to the application, the applicant should be allowed to fully administer the estate (of **Peter Njenga Ringiria**).
11. There are two difficulties with this prayer by the applicant.

First, to be substituted as the administrator of the estate of Hannah Wanjiku Njenga, he would have to obtain letters of

administration intestate to her estate. He cannot do this as she had children who rank in priority to him. Secondly, he cannot be both the appellant and the respondent in the appeal. He challenges the decision of the High Court rendered in favour of the respondent, and his interests in the estate of Peter Njenga Ringiria are, accordingly, diametrically opposed to those of the deceased respondent and her estate.

12. In the circumstances, I find that the application before me is incompetent. It is therefore struck out with leave to the applicant to apply for revival of the appeal and substitution of the respondent once grant of representation to the estate of the deceased respondent has been made.

13. There shall be no order as to costs.

Dated and delivered at Nairobi this 13th day of February, 2026.

MUMBI NGUGI

.....
JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.