



**Guatati (Suing as the Administrator of the Estate of Grace Wanjiru Guatati)
v Kinyanjui & 2 others; Mwaura (Intended Interested Party) (Civil Appeal
(Application) 79 of 2019) [2026] KECA 855 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KECA 855 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 79 OF 2019
P NYAMWEYA, JA
APRIL 30, 2026**

BETWEEN

**NJOROGE GUATATI (SUING AS THE ADMINISTRATOR OF THE ESTATE OF
GRACE WANJIRU GUATATI) APPELLANT**

AND

STEPHEN MBUTU KINYANJUI 1ST RESPONDENT

EVANS MWAURA KAMUKII 2ND RESPONDENT

GRACE WAMBUI MWAURA (DECEASED) 3RD RESPONDENT

AND

JOHN KINYANJUI MWAURA INTENDED INTERESTED PARTY

*(An application for joinder and various declarations and
injunctions pending the hearing of the appeal filed herein)*

RULING

1. John Kinyanjui Mwaura, the applicant herein, has lodged an application dated 17th December 2025 in this Court, in which he is seeking various orders. I shall reproduce the prayers sought in the said application verbatim, as they raise implications on the jurisdiction of this Court as constituted by a single Judge. The prayers are as follows:
 1. That the Honorable court be pleased to certify this application as urgent and suitable for hearing and determination prior to the application dated 23rd October 2023.



2. That the Honorable court be pleased to order for a stay of all further proceedings in Civil Appeal No. 79 of 2019 pending the lawful substitution of the 3rd Respondent, Grace Wambui Mwaura, (deceased) who died on 12th January 2024.
 3. That the Honorable court be pleased to enjoin the intended interested party in these proceedings pending the substitution of his deceased mother, the 3rd respondent herein.
 4. That the Honorable court be pleased to order that the joinder of the intended interested party shall not amount to substitution, representation of the estate, or assumption of the rights and liabilities of the deceased 3rd Respondent.
 5. That the Honorable court be pleased to find that the 2nd respondent is incapacitated and requires substitution prior to further proceedings in the current appeal.
 6. That the Honorable court be pleased to grant the intended interested party time to petition for a Grant of Letters of Administration for the estate of the 3rd respondent after which he shall be at liberty to apply for substitution in accordance with Rule 96 of the Court of Appeal Rules, 2022.
 7. That this Honorable Court be pleased to declare that the appeal has been overtaken by events after the estate property to wit' KIAMBAA/KIHARA/680 was lawfully distributed to the beneficiaries and fresh title deeds issued pursuant to the judgment delivered on 22nd September 2022.
 8. That this Honorable Court be pleased to decline the intended appellant's attempt to re-litigate the judgment and decree in Kiambu Succession Cause Number 94 of 2017 by Honorable Lady Justice Mary Kasango dated 22nd September 2022 through the backdoor.
 9. That this Honorable court be pleased to dismiss or strike off the Appeal in its entirety for being hopeless, incompetent, frivolous, vexatious, and an abuse of the court process.
 10. That costs of this Application be in the cause.”
2. It is evident from the raft of the prayers that a majority are final and dispositive in nature and cannot be granted either by a single Judge nor at an interlocutory stage. A number of the remaining prayers are expressly outside the remit of the jurisdiction of a single Judge of this Court, which is expressly provided in Rule 55 of the Court of Appeal Rules as follows:

“ 55.

- (1) Each application, other than an application specified in sub-rule (2), shall be heard by a single judge:

Provided that such application may be adjourned by the judge for determination by the Court.

- (2) This rule shall not apply to—
 - a. an application for leave to appeal;
 - b. an application for a stay of execution, injunction, or stay of further proceedings;



- c. an application to strike out a notice of appeal or an appeal; or
 - d. an application made as ancillary to an application under paragraph (a) or (b) or made informally in the course of a hearing.”
3. The only prayer that is properly before this Court is that of joinder of the applicant as an interested party in this appeal. In summary, the grounds for this prayer as set out in the application and applicant’s supporting affidavit of even date, are that the applicant is a son of the 3rd respondent herein, Grace Wambui Mwaura, who died on 12th January 2024, and who has not been substituted. Further, that the applicant is directly affected by the subject matter and outcome of this appeal being the administrator of the estate of Kamukii Mwethi (Deceased) whose estate was the subject of this appeal, and having been served with hearing notice on 11th December 2025 for an application dated 23rd October 2023 seeking to revive an abated appeal and touching on the estate of the deceased 3rd respondent.
4. Lastly, the applicant expressly acknowledges that he is not a legal representative of the estate of the 3rd respondent and lacks locus to seek substitution without a grant of letters of administration, and states that his application for joinder as an interested party is strictly for protective and procedural purposes, since orders may issue affecting the estate of the deceased in the absence of lawful representation, thereby occasioning irreparable prejudice. Specifically, that the purpose of the application is limited to preserving the status quo, preventing prejudice, and allowing time to obtain the 3rd respondent’s death certificate and grant of letters of administration.
5. Njoroge Guatati, the appellant in this appeal, opposed the application by way of replying affidavit he swore on 5th February 2026, in which he made the following averments which were not controverted by the applicant:
 - i. Prayer 3 of the Application is spent as the Interested party was enjoined to the proceedings via Orders issued by this Court on 18th December 2025.
 - ii. That without having taken out Letters of Administration for the Estate of the said Grace Mwaura, the Applicant has no audience before this Court for the nature of the prayers sought
 - iii. That in any event, the Applicant seeks to litigate against the Application dated 23rd October 2023 which has since been determined
 - iv. That without prejudice to the foregoing, some of the prayers sought are incapable of being addressed by a single Judge bench and the said issues would need to be litigated before a 3 Judge bench.
6. These averments were elaborated on in submissions dated 5th February 2026 filed by the appellant’s advocates on record. The applicant on the other hand did not file any submissions on the application.
7. I heard the application in chambers in the absence of the parties on 29th July 2025, and have considered the pleadings filed by the applicant and appellant. There is indeed an order in this respect on record in this appeal made by this Court (G.V.Odunga J.A) on 18th December 2025 as follows:

“By consent of parties, prayer 3 in the application dated 23rd of October 2023, is granted and John Kinyanjui Mwaura is hereby joined as an interested party in the appeal.”



8. The application for joinder has therefore been clearly been overtaken by events. As noted earlier on in this ruling, the remaining prayers are not competently before this Court. The result is that the application dated 17th December 2025 is accordingly struck out with no order as to costs.

9. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL 2026.

P. NYAMWEYA.

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

