



REPUBLIC OF KENYA



**Mungai & 3 others v Mbugua & another (Civil Appeal (Application)
311 of 2019) [2025] KECA 81 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KECA 81 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 311 OF 2019
LA ACHODE, JA
JANUARY 24, 2025**

BETWEEN

**JANE NJERI MUNGAI 1ST APPLICANT
MARTIN MUNGAI 2ND APPLICANT
JOSHUA MBUGUA A.K.A PETER MBUGUA NGUGI 3RD APPLICANT
SUSAN WANJIRU A.K.A SUSAN NAIPONO LETUYA 4TH APPLICANT**

AND

**ALLAN GITAU MBUGUA 1ST RESPONDENT
GICHAGE KIMANI 2ND RESPONDENT**

(Being an application for substitution in an appeal from the judgment of the High Court at Kajiado (Nyakundi J) delivered on 18th April, 2018 in Succession Cause No. 45 of 2017)

RULING

1. Before me is an application dated 11th December, 2024, brought by Jane Njeri Mungai, Martin Mungai, Peter Mbugua Ngugi and Susan Naipono Letuya, under rule 102(1)(3) of the Court of Appeal Rules, 2022. The application seeks to revive an appeal which abated on account of the death of the executors; Allan Gitau Mbugua and Gichage Kimani (both deceased), who had been sued as the respondents.
2. The application also seeks the substitution of Allan Gitau Mbugua and Gichage Kimani (deceased executors), with Susan Naipono Letuya and Anthony Peter Mbugua, who are the current legal representatives of the estate of the deceased.
3. The application is supported by the affidavit of even date sworn by Jane Njeri Mungai and Peter Mungai Ngugi.



4. The applicants filed submissions dated 16th January 2025 through the firm of M/s J. Makumi and Company Advocates. They urge that the death of the administrators/executors came up on 12th March 2024 before the Deputy Registrar, whereupon the applicants erroneously filed an application dated 1st July, 2024 for substitution of the administrators/executors, without first seeking leave to revive the appeal which had abated. That application was dismissed.
5. They subsequently filed the current application seeking to revive the abated appeal and substitute the deceased administrators/executors. It is submitted that the appeal abated one year following the death of the 2nd respondent who died the year 2020. That the two representatives were so appointed on 22nd September 2022. Lastly, that the delay is not inordinate and the first house having already filed submissions, they will not suffer any prejudice.
6. Counsel relied on the decisions in Nairobi Civil Appeal (Application no. 385 of 2018) Omar alias Zuhura Wangare Kamandura V Chege [2023] KECA 1200 (KLR) and Nairobi Civil Appeal (Application) No. 30 of 2005 Elizabeth Wanjiru Njenga & Anor V Margaret Wanjiru Kinyara & 2 Others [2018] eKLR of similar circumstances to the case before me to explain that the delay in filing the application for the revival of the appeal herein has been explained.
7. The directions for filing of submissions were given by the Deputy Registrar, on 14th January, 2025. The first house did not file a response to the application, or submissions. The application is therefore uncontested.
8. Rule 102 (1) and (3) of the Court of Appeal Rules, 2022 under which the applicants approached the Court provides that:

“(1) An appeal shall not abate on the death of the appellant or respondent but the Court shall, on the application of any interested person, cause the legal representation of the deceased person to be made a party in place of the deceased.

(3) the person claiming to be the legal representative of a deceased party or an interested party to an appeal may apply for an order to revive an appeal which has abated and, if it is proved that the legal representative was prevented by sufficient cause from continuing the appeal, the court shall revive the appeal upon such terms as to costs or otherwise as it deems fit.”

9. By dint of rule 102 (1) and (3) Court of Appeal Rules 2022, therefore, any person interested in an appeal may apply for a deceased party to the appeal to be substituted with their legal representative. Upon considering the submissions, I am satisfied that the applicants have met the threshold for granting the orders sought.

Consequently, I allow the application dated 11th December, 2024 and order as follows:

- a. The abated appeal be and is hereby revived.
- b. The two respondents Allan Gitau Mbugua and Gichage Kimani (deceased), be and are hereby substituted by the current representatives of the estate of the deceased being, Susan Naipono Letuya and Anthony Mbugua.
- c. The applicants shall within fourteen (14) days from the date of delivery of this ruling, file an Amended Record of Appeal, reflecting the substituted parties in accordance with this ruling.
- d. Thereafter the appeal shall be fixed for hearing on a date to be taken in the registry.



It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JANUARY, 2025.

L. ACHODE

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JUDGE OF APPEAL

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

Signed

