



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ngari v Murithi (Deceased) Substituted by Wanjira Ngari & another (Civil Appeal (Application) 140 of 2018) [2025] KECA 358 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KECA 358 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) 140 OF 2018  
W KARANJA, JA  
FEBRUARY 14, 2025**

**BETWEEN**

**ALICE WANGUI NGARI ..... APPLICANT**

**AND**

**STEPHEN MAINA MURITHI (DECEASED) SUBSTITUTED BY WANJIRA  
NGARI ..... 1<sup>ST</sup> RESPONDENT**

**PATRICK MAINA MURIITHI ..... 2<sup>ND</sup> RESPONDENT**

*(An appeal against the Judgment of Environment and Land Court of Kenya at Nyeri L. N. Waitbaka, J. dated 12th July, 2016 in ELC No. 135 of 2014)*

**RULING**

1. The Notice of motion before the Court is dated 29<sup>th</sup> July, 2024 and filed by Karweru & Co. Advocates. The supporting affidavit is sworn by Charles Muchemi Karweru and not by the appellant Wanjira Ngari. I can, therefore, state that the firm of Karweru & Co Advocates is the actual applicant, as there is no affidavit sworn by the appellant and nor has she signed she signed the notice of motion.
2. In essence, the application seeks 2 prayers: Firstly, that the Court appoints the interested party, Patrick Maina Muriithi the administrator of the 1<sup>st</sup> respondent's estate as the 1<sup>st</sup> respondent in the appeal, secondly, that the appeal which has since abated be revived. In the affidavit in support of the application sworn by Mr. Charles Karweru on even date, he deposes that he is familiar with matter; that the 1<sup>st</sup> respondent is deceased and the interested party herein was granted letters of administration to the said estate (a copy of which is annexed to the affidavit); and further that the interested party has refused to apply for substitution to enable his client prosecute the pending appeal.



3. The application is strenuously opposed by Patrick Muriithi, the intended substitute through a replying affidavit dated 7<sup>th</sup> August, 2024 and a further replying affidavit. The applicant (Mr. Karweru) filed half a page submission in support of the application.
4. I have considered the notice of motion, the rival affidavits and the submissions filed by counsel for the applicant. I must point out that most of the depositions made in the two replying affidavits dwell on the substance of the appeal, which is not for determination before us. I will determine this application purely on a point of law.
5. Rule 102(3) of the Court of Appeal Rules 2022 provides as follows:

“The person claiming to be the legal representative of a deceased party or an interest 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 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.” (emphasis mine)
6. The above provision is clear. The legal representative of deceased’s estate is enjoined to apply to substitute a deceased party in the event the cause of action or the proceedings pending in Court survive the deceased party. In the event the legal representative refused to do so, as could be the case here, a party who has an interest in the appeal can move the Court for the appropriate orders. Counsel for the surviving party cannot by any stretch of imagination be deemed to be an intended party under the above Rule.
7. In this case, Mr. Karweru represents a party, who must have expressed an interest to continue with the appeal. As counsel for the party, he is deemed to have no personal interest in the matter. He cannot, therefore, file the application for substitution in his name and even swear the supporting affidavit, regardless of his familiarity with the matter. That duty fall squarely on the appellant’s shoulders.

For that reason, the application before me fails and is hereby dismissed, with costs to the interested party (intended substitute) Patrick Muriithi.

Orders accordingly.

**DELIVERED AND DATED AT NYERI THIS 14<sup>TH</sup> DAY OF FEBRUARY 2025.**

**W. KARANJA**

.....

**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

