



**Munene (Deceased) & another v Kang’ata; Muna (Applicant) (Civil Appeal (Application) 97 of 2018) [2025] KECA 594 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 594 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) 97 OF 2018**

**JW LESSIT, JA**

**MARCH 7, 2025**

**BETWEEN**

**GEORGE MUNA MUNENE (DECEASED) ..... 1<sup>ST</sup> APPELLANT**

**CHARITY NJERI MUNA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**FRANCIS MURAGE KANG'ATA ..... RESPONDENT**

**AND**

**CHARITY NJERI MUNA ..... APPLICANT**

*(Being an application for substitution in an appeal from the Judgment of the Environment and Land Court at Nyeri (Ombwayo, J.) delivered on 4th February 2015 in E.L.C. Appeal No. A7 of 2015)*

**RULING**

1. Before me is an application dated 28<sup>th</sup> May 2024 brought by Charity Njeri Muna under section 3A and 3B of the [Appellate Jurisdiction Act](#) and Rule 99(1) of this [Court’s Rules 2010](#). The applicant who is also the 2<sup>nd</sup> appellant in the main appeal seeks the substitution of George Muna Munene (deceased); the 1<sup>st</sup> appellant, with herself - as his wife and the legal representative of the deceased’s estate.
2. The application is based on the grounds set out on its face and reiterated in the affidavit in support of even date sworn by the applicant. The applicant avers that the 1<sup>st</sup> appellant died on 26<sup>th</sup> July 2021 before full prosecution of the appeal. On 27<sup>th</sup> May 2024 she obtained letters of administration ad litem in respect of the deceased’s estate vide Nyeri Chief Magistrates Probate and Administration Ad Litem No. 67 of 2024 for purposes of substitution of the estate of the deceased in Nyeri Court of Appeal Civil Appeal No. 97 of 2018 and therefore prays for substitution so that she can prosecute the appeal to its



logical conclusion. She further avers that the respondent will not suffer any prejudice if the application is allowed, and that in the circumstances it is only just that the application be allowed.

3. There is no response to the application. The respondent has equally not filed any written submissions. The applicant has attached an affidavit of service by Stella W. Mahugu, an advocate in the firm of Messrs. Sichangi Partners Advocates, sworn on 13<sup>th</sup> February 2025 which shows that the applicant's submissions were served upon counsel for the respondent Messrs. Magee Law LLP. However, I note that the name of the respondent in this application, Francis Murage Kang'ata, is not the same as that of the respondent in the appeal, Salome Warware, and further there is no indication whether the respondent in the appeal was ever substituted with the respondent herein.
4. Be that as it may, the applicant has filed written submissions dated 13<sup>th</sup> February 2025 through the firm of Messrs. Sichangi Partners Advocates which submissions are basically a reiteration of the grounds contained in the application and affidavit in support. In addition, she submits that she is interested in prosecuting and defending the appeal herein as its outcome will have a direct bearing on their family as a whole.
5. The applicant has relied on the [Court of Appeal Rules, 2010](#) which Rules were revoked by [Court of Appeal Rules, 2022](#). Rule 99(1) of the 2010 Rules is currently Rule 102(1).
6. Rule 102 provides as follows:-
  1. "An appeal shall not abate on the death of the appellant or respondent but the Court shall, on the application of any interested party, cause the legal representative of the deceased person to be made a party in place of the deceased.
  2. If no application is made under sub-rule (1) within twelve months from the date of the death of the appellant or respondent, the appeal shall abate.
  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.
  4. An application under sub rule (3) may be made before a single judge."
7. The 1<sup>st</sup> appellant in this case died on 26<sup>th</sup> July 2021. No application was made under rule 102(1) of this [Court Rules](#) within one year from the date of death and therefore by operation of rule 102(2) of the rules of this Court, the appeal by the 1<sup>st</sup> appellant abated. In [Said Sweilem Gheitban Saanum v Commissioner of Lands \(being sued through Attorney General\) & 5 Others](#) [2015] KECA 284 (KLR) this Court held that:

"Because the deceased died on 28<sup>th</sup> August, 2004 and since no application was made within one year of his death to have his legal representative substituted in his place, there can be no debate on the fate of the suit. It abated."
8. The applicant had an option to invoke Rule 102(3) and seek for the revival of an appeal that has undoubtedly abated. The applicant, as the legal representative of the deceased would, as required, have given sufficient reason that caused the discontinuity of the appeal. As this sub-rule has not been invoked, and as the appeal has already abated, the substitution of the 1<sup>st</sup> appellant, without an application to revive the deceased's appeal cannot succeed. I find that there is no appeal with respect to which an order for substitution can be made.



9. Mumbi, JA. in the case of *Mungai & 3 Others v Mbugua & Another* (Civil Appeal (Application) 311 of 2019) [2024] KECA 1752 (KLR) (6 December 2024) (Ruling) stated as follows:-

“In the matter before me, the applicants seek substitution of the parties, but they have not sought revival of the appeal which abated twelve months from the death of Allan Gitau Mbugua and Gichage Kimani. The applicants have therefore put the cart before the horse: there is no appeal with respect to which an order for substitution can be made. However, as the cases cited by the applicants, particularly Omar alias Zuhura Wangare Kamandura v Chege (supra) illustrate, an application can be made, simultaneously, for revival of an appeal and substitution of the personal representative of the deceased appellant, or the persons appointed to represent the estate of a deceased person, as in this case.”

10. For the foregoing reasons, the application dated 28<sup>th</sup> May 2024 is incompetent and is accordingly struck out with no order as to costs.

**DATED AND DELIVERED AT NYERI THIS 7<sup>TH</sup> DAY OF MARCH, 2025.**

**J. LESIIT**

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**JUDGE OF APPEAL**

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

Signed

**DEPUTY REGISTRAR**

