



REPUBLIC OF KENYA



KENYA LAW
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**Mwaniki & another v Kamara & 2 others (Civil Application
E047 of 2025) [2025] KECA 1236 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1236 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E047 OF 2025
S OLE KANTAI, JA
JULY 11, 2025**

BETWEEN

FRANCIS KIBE MWANIKI APPLICANT

AND

MARY WANGECHI KAMARA DECEASED

AND

ROSE MUTHONI KAMARA 1ST RESPONDENT

RAHAB WANJIKU KAMARA 2ND RESPONDENT

NELSON KAMARA MWANIKI 3RD RESPONDENT

(An application for extension of time and/or enlargement of time for the applicant to substitute the appellant against the Judgments of the High Court at Nyeri (F. Muchemi, J.) delivered on 7th October, 2021 in H.C. Succ. Cause No. 533 of 2012)

RULING

1. I am asked in the Motion on Notice said to be brought under rules 4, 44, 53 and 102(3) of the Court of Appeal Rules and any other enabling provisions of law for leave to revive Civil Appeal No. E139 of 2022 and Civil Application No. E078 of 2022 which have abated; that I be pleased to grant an extension and/or enlargement of time for the applicant to substitute the appellant on the legal representation of his estate; that I be pleased to substitute the appellant Mary Wangechi Kamara with Francis Kibe Mwaniki in the said Civil Appeal No. E139 of 2022 and Civil Application No. E078 of 2022.
2. In grounds in support of the application and in a supporting affidavit of Francis Kibe Mwaniki it is stated that the appellant in the said appeal and application Mary Wangechi Kamara died on 9th June, 2023 and the applicant Francis Kibe Mwaniki wishes to substitute the deceased; that 1 year has



since lapsed since the deceased died; that delay in substitution resulted from the fact that the family of the deceased was grief-stricken due to her death; that there was also delay in obtaining letters of administration ad litem; the applicant has now obtained those letters and time should be thus enlarged.

3. There is a replying affidavit by the 1st respondent Rahab Wanjiku Kamara who says that she and the other respondents are also children of the deceased; that the application should be dismissed; that the applicant wants to be an administrator "...on top of another administration cause to obfuscate the issues and avoid confirmation of grant...."; that the applicant wants to delay Nyeri High Court Succession Cause No. 533 of 2012, a family succession dispute spanning over 15 years while the estate continues being wasted pending confirmation of grant; that the matter at the High Court should be fast-tracked; that if I allow this application it will cause hardship to the family; that the application as presented is bad in law, vexatious and an abuse of the process of the court.
4. I have seen limited grant of letters of administration ad litem issued to the applicant in High Court of Kenya at Nyeri in Succession Cause No. E005 of 2025 *In the matter of Mary Wangechi Kamara (deceased)* issued on 12th March, 2025.
5. The principles that apply in an application of this nature were well summarized in the oft-cited case of *Leo Sila Mutiso vs. Rose Hellen Wangari Mwangi* [1999] 2 EA 231 as follows:

"It is now well settled that the decision whether or not to extend the time for appealing is essentially discretionary. It is also well stated that in general the matters which this Court takes into account in deciding whether to grant an extension of time, are first, the length of the delay, secondly, the reason for the delay, thirdly (possibly) the chances of the appeal succeeding if the application is granted, and fourthly, the degree of prejudice to the respondent if the application is granted."

6. The deceased died on 9th June, 2023. There are matters pending in court which survive her. The applicant has obtained letters of administration ad litem to prosecute those matters. It is necessary in those circumstances that the deceased be substituted to enable the applicant to continue those pending matters. I cannot see any prejudice that the respondents would suffer if I allow the application. There is a reasonable explanation for delay in bringing the application.
7. I allow the Motion. I make no order on costs in the circumstances.

DATED AND DELIVERED AT NYERI THIS 11TH DAY OF JULY, 2025.

S. OLE KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

