



REPUBLIC OF KENYA



**Njoroge v Mbote (Civil Appeal (Application) E321 of 2012)  
[2025] KECA 1201 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KECA 1201 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) E321 OF 2012**

**F SICHALE, JA**

**JULY 4, 2025**

**BETWEEN**

**GENERAL H.W NJOROGE ..... APPLICANT**

**AND**

**WILLIAM NJOROGE MBOTE ..... RESPONDENT**

*(Being an Application for Substitution of the Original Respondent  
pursuant to Rule 102 of the Court of Appeal Rules, 2022)*

**RULING**

1. By the Motion on Notice dated 13<sup>th</sup> March 2025, brought under Sections 3, 3A and 3B of the [Appellate Jurisdiction Act](#), Rule 102 of the Court of Appeal Rules 2022, General H.W Njoroge (hereinafter “the applicant”) has invoked the Jurisdiction of this Court sitting as a Single Judge seeking the following orders:
  - “a. Spent.
  - b. That this Honourable Court be pleased to revive the appeal.
  - c. That the Honourable Court be pleased to order for the substitution of the Original respondent, William Njoroge Mbote (now deceased) with Emily Wanjiru Mbote and Jacqueline Ann Njeri Mbote, being the Administrators of the Estate of William Njoroge Mbote.
  - b. That the costs of this application to abide the appeal.”
2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant, who deposed inter alia That he had instituted Milimani ELC No. 52 of 2015; General H.W



Njoroge v William Njoroge Mbote, arising from breach of a sale agreement over suit property L.R. 1008/39.

3. That, during the pendency of the suit, the respondent passed away and he instructed his advocates to cite the Administrators of the Estate of the respondent to take out letters and defend the suit in Succession Cause No. 110 of 2019 (In the Matter of the Estate of William Njoroge Mbote).
4. That, the matter was scheduled for mention before the trial court on 9<sup>th</sup> December 2019, to confirm the status of the citation filed in the succession matter and to appraise the court on the process of substitution of the deceased, but due to his counsel's non-attendance, the suit was dismissed for want of prosecution and his subsequent application to set aside the said orders was dismissed by Komingoi J, on 28<sup>th</sup> January 2021 resulting in the instant appeal.
5. He further deposed That a consent was recorded on 24<sup>th</sup> October 2023, to the extent That suit property L.R. 1008/39 be excluded from the Estate of the respondent pending the hearing of this appeal.
6. That, on 13<sup>th</sup> August 2024, Emily Wanjiru Mbote and Jacqueline Ann Njeri Mbote were duly appointed Administrators of the Estate of the respondent, which Grant was confirmed on 4<sup>th</sup> March 2025 and That despite the foregoing, they had not taken any steps to be substituted as representatives of the Estate of the deceased in this appeal, hence the instant application.
7. The motion was opposed vide a replying affidavit sworn on 21<sup>st</sup> March 2025, by Jacqueline Anne Njeri Mbote one of the Joint Administrators of the Estate of the respondent, who deposed inter alia That the appellant's suit against the respondent abated 1 year after his death and That the suit having been dismissed on 9<sup>th</sup> December 2019, two days before the suit abated, they saw no need to substitute the respondent as there was no suit to be litigated upon and That further the appellant's suit had never been reinstated and That therefore they could not be faulted for failing to substitute the respondent.
8. It was submitted for the applicant That the respondent herein had been deceased for a period of over 12 months hence the need to revive the appeal and That during the pendency of the appeal, the applicant and the personal representatives of the Estate of the respondent had agreed to attempt mediation to resolve the dispute but they could not agree on the sum to be reimbursed to the applicant, which mediation proceedings if successful, could have determined the appeal.
9. It was further submitted That Emily Wanjiru Mbote and Jacqueline Ann Njeri Mbote were granted Letters of Administration of the Estate of the deceased respondent on 13<sup>th</sup> August 2024, which Grant was subsequently confirmed on 4<sup>th</sup> March 2025 and That the instant application was filed within 10 days of knowledge of the confirmation of the Grant and That the delay therefore had been explained as the revival could not have been carried out without legal representatives.
10. For this proposition, reliance was placed on the case of Issa Masudi Mwabumba v Alice Kavenya Mutunga & 4 Others [2012] KECA 248(KLR).
11. It was further submitted That the legal representatives of the respondent knowing That the appeal had abated were not interested in revival of the appeal; for the simple reason That the same was a liability to the Estate of the deceased.
12. On the other hand, it was submitted for the legal representatives of the respondent, That the respondent herein who was the defendant in the underlying suit died on 11<sup>th</sup> December 2018 and by operation of the law, the suit against the respondent abated on 11<sup>th</sup> December 2019, for lack of substitution by his legal representatives and That it has been 6 years since the suit abated against the respondent



13. It was further submitted That Rule 102 (3) of the Court of Appeal Rules 2022, did not apply to this case as the underlying suit abated before this appeal was filed and That the appellant’s appeal seeks for the reinstatement of the underlying suit.
14. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the replying affidavit, the respective parties’ submissions, the cited authorities and the law.
15. The applicant’s motion is premised inter alia on the provision of Rule 102 of the Court of Appeal Rules. 2022. The said Rule provides:
  - “ 102. Death of party to appeal
    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 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.”
16. It is not in dispute That the applicant had instituted Milimani ELC Case No. 52 of 2015, against the respondent arising from breach of a sale agreement over the suit property namely;L.R 1008/39.
17. It is also not in dispute That the respondent subsequently passed away on 11<sup>th</sup> December 2018 and the suit was dismissed on 9<sup>th</sup> December 2019, 2 days after the same had abated for want of prosecution.
18. It is also not in dispute That vide an application dated 16<sup>th</sup> December 2019, Kimingoi J, dismissed the applicant’s application seeking to set aside the dismissal orders resulting in the instant appeal.
19. It is also common ground That on 24<sup>th</sup> October 2023, a consent order was recorded to the extent That the suit property namely L.R 1008/39 be excluded from the Estate of the respondent pending the hearing of this appeal.
20. On 13<sup>th</sup> August 2024, Emily Wanjiru Mbote and Jacqueline Ann Njeri Mbote, were duly appointed Administrators of the Estate of the respondent, which Grant was subsequently confirmed on 4<sup>th</sup> March 2025.
21. The applicant subsequently filed the instant motion on or about 13<sup>th</sup> March 2025, which was 9 days after Emily Wanjiru Mbote and Jacqueline Ann Njeri Mbote were issued with a confirmed Grant of Letters of Administration in respect of the Estate of the deceased.
22. Given the chronology of this matter, That I have given above, and the suit against the deceased having already abated on 11<sup>th</sup> December 2019 and the same having been dismissed on 9<sup>th</sup> December 2019 and



the same having never been reinstated, I am of the considered opinion That the orders being sought cannot issue, as the legal representatives of the respondent cannot be enjoined in a suit That has already been dismissed and abated.

23. Accordingly the applicant's motion dated 13<sup>th</sup> March 2025, is without merit and the same is hereby dismissed with no order as to costs.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY, 2025.**

**F. SICHALE**

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**JUDGE OF APPEAL**

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

Signed

DEPUTY REGISTRAR

