



**Sangui & 11 others v Kedong Ranch Limited (Suing on their Behalf and on Behalf of the Persons and Families Residing on What is Commonly Known as Kedong Ranch Situated on L.R. No. 8396 (I.R. No. 11977) (Civil Appeal (Application) 226 of 2015) [2024] KECA 91 (KLR) (9 February 2024) (Ruling)**

Neutral citation: [2024] KECA 91 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) 226 OF 2015  
GWN MACHARIA, JA  
FEBRUARY 9, 2024**

**BETWEEN**

**GEORGE OLE SANGUI ..... 1<sup>ST</sup> APPELLANT  
SHOKORET OLE SETABAU ..... 2<sup>ND</sup> APPELLANT  
FRANCIS PATU SIMPANOI ..... 3<sup>RD</sup> APPELLANT  
OLEKU OLE PUNYWA ..... 4<sup>TH</sup> APPELLANT  
SIPAIE OLE KOMEYAN ..... 5<sup>TH</sup> APPELLANT  
NTIKA OLE ROKA ..... 6<sup>TH</sup> APPELLANT  
DOPOI OLE NCHONSHOI ..... 7<sup>TH</sup> APPELLANT  
ATETI OLE NKUME ..... 8<sup>TH</sup> APPELLANT  
TERERE OLE MALOI ..... 9<sup>TH</sup> APPELLANT  
KUDATE OLE AMBONI ..... 10<sup>TH</sup> APPELLANT  
LENGUTUTI OLE LESIRI ..... 11<sup>TH</sup> APPELLANT  
KOOLI OLE MUTUTUA ..... 12<sup>TH</sup> APPELLANT**

**AND**

**KEDONG RANCH LIMITED ..... RESPONDENT  
SUING ON THEIR BEHALF AND ON BEHALF OF THE PERSONS AND  
FAMILIES RESIDING ON WHAT IS COMMONLY KNOWN AS KEDONG  
RANCH SITUATED ON L.R. NO. 8396 (I.R. NO. 11977**

*(Being an application to revive the appeal by the 1st, 2nd, 4th, 8th and 10th Appellants)*



## RULING

1. John Mwariri, an advocate C/O Kituo Cha Sheria, filed the instant application dated 22<sup>nd</sup> October 2023, under the provisions of rules 1 (2), 102 (2) and (3) of the *Court of Appeal Rules*. The application is supported by the affidavit of Patrick Kirotie Tumanka, sworn on even date. The applicant is seeking that leave be granted to John Mwariri, advocate C/O Kituo Cha Sheria, to come on record on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants; that the Court revives the appeal by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants; that the Court do grant an order of substitution of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants (all deceased) with their legal representatives and that the appeal filed by them be deemed as subsisting; and that costs be provided for.
2. It was deposed that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants are deceased, and that the grants of letters of administration have been issued respectively; that however, the letters of administration were obtained late, and one year has since lapsed which has caused the delay in bringing the instant application; that the families of the deceased were occupants and claiming ownership of the parcel of land to which this appeal relates, hence, they have an interest in the appeal; and that as such, the revival of the appeal will ensure that the interests of the deceased appellants are ventilated through their legal representatives.
3. Further, it was deposed that there are allegations that a deed of settlement dated 4<sup>th</sup> May 2019, and a consent were subsequently entered into by the deceased persons with the directors of the respondent in settlement of Civil Appeal No. 226 of 2015, which is denied by the appellants themselves. It was urged that the participation of the legal representatives is crucial in aiding the Court to reach a just determination on the issues in dispute.
4. In response, Stanley Kinyanjui, a director of the respondent swore an affidavit on 11<sup>th</sup> December 2023 in which he deposed that the respondent was the registered owner of property L.R. Number 8396 (I.R. No. 11977) (suit property); that the appellants claimed to have acquired the suit property by way of adverse possession which claim was dismissed by the Environment and Land Court (ELC) in Nakuru vide a judgement delivered on 30<sup>th</sup> January, 2014; and that the appellants then filed the instant appeal which was determined by a consent order dated and signed the 16<sup>th</sup> May 2019, and recorded as an order of this Court on 16<sup>th</sup> September 2019.
5. Further, the respondent contends that it emerged from the supporting affidavit of Patrick Kirotie Tumanka that: the 1<sup>st</sup> appellant died on 13<sup>th</sup> August 2010, four years before the instant appeal was filed; the 2<sup>nd</sup> appellant died on 21<sup>st</sup> March 2019 after the filing of the appeal; the 4<sup>th</sup> appellant died on 12<sup>th</sup> January 2014, one year before the filing of the appeal; the 8<sup>th</sup> appellant died on 29<sup>th</sup> July 2018 when the appeal had already been filed, and; that the 10<sup>th</sup> appellant died on 7<sup>th</sup> May 2014, a year before the filing of the appeal; that the appeal is therefore a nullity as far as it concerns the 1<sup>st</sup>, 4<sup>th</sup> and 10<sup>th</sup> appellants, since it was filed a year after their death; that the appeal abated upon the death of the 2<sup>nd</sup> and 8<sup>th</sup> appellants; and that in any case, it has not been shown that their representatives were prevented by sufficient cause from continuing with it (appeal).
6. The respondent went on to state that the present application was preceded by applications dated 30<sup>th</sup> October 2019 and 7<sup>th</sup> March 2023, by Sipaie Ole Komeyan and Francis Patu Simpanoi respectively, seeking to set aside the consent order dated 16<sup>th</sup> September 2019, which is the ultimate gist of the present application.



7. According to Stanley Kinyanjui, it is manifest from the Court record that there is an effort by other individuals other than the real parties in the dispute filed in the ELC and this appeal, to abuse the court process and commit a fraud in the guise of setting aside the consent order. It was urged that there are no grounds demonstrated to warrant grant of the orders sought, and, as such, that application should be dismissed with costs.
8. None of the parties filed submissions.
9. I have accordingly considered the application, the affidavit in support of, and in opposition to, the application and the law.
10. The applicant seeks three major prayers, namely that John Mwariri Advocate who is practicing at the Kituo Cha Sheria comes on record on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants; that the appeal by the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants be revived; and that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants be substituted accordingly.
11. The respondent seems not to object to John Mwariri advocate coming on record on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants. I have noted that in the previous court proceedings, Mr. Willis Otieno appeared for the 1<sup>st</sup> appellant. The hearing notice dated 4<sup>th</sup> December 2023 was served upon all counsel in the matter, including Mr. Willis Otieno via email address otienowill@yahoo.com. Having made no appearance or raised any objection to Mr. John Mwariri coming on record on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants, I find no reason to withhold the first prayer. I therefore allow Mr. John Mwariri, advocate to come on record on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants.
12. Turning on to the other prayers, rule 102 (1) (2) and (3) of the *Court of Appeal Rules*, 2022 provide:
  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.
13. The law is express that upon the death of a party to an appeal, the appeal does not in the first instance abate, but it does so after 12 months from the date of the death if no application for substitution is made. In the event that a legal representative or an interested party of the deceased person, wishes to revive the appeal, they may do so as long as they proffer sufficient cause which prevented them from filing the application sooner.
14. Patrick Kirotie Tumanka deposed that there was delay in issuance of the grant of letters of administration. I have had the advantage of looking at the grants of letters of administration ad litem issued in respect to the estates of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants. None of them have been issued in favour of Patrick Kirotie Tumanka, and neither has Patrick Kirotie Tumanka specified in his averments that he is a beneficiary of the estates of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants. Further, Patrick has not also elucidated what his particular interest in this appeal is, since this Court's Rules envisage that either a person claiming to be a legal representative or an interested party may apply for an order to revive the appeal.



15. The respondent has drawn my attention to the fact that the appeal was filed after the death of the 1<sup>st</sup>, 4<sup>th</sup> and 10<sup>th</sup> appellants. To be specific, the Notice of Appeal was filed on 5<sup>th</sup> February 2015. The 1<sup>st</sup>, 4<sup>th</sup> and 10<sup>th</sup> appellants died on 13<sup>th</sup> August 2010, 12<sup>th</sup> January 2014 and 7<sup>th</sup> May 2014 respectively. It then follows that the instant appeal was commenced after their deaths, and it is obviously a nullity against them.
16. I am at my wits end to comprehend the possibility of a deceased person commencing and sustaining an appeal. It would have been by all means prudent that the legal representatives of the 1<sup>st</sup>, 4<sup>th</sup> and 10<sup>th</sup> appellants obtain grant of letters of administration ad litem in the first instance before filing the appeal. Therefore, it is a fare-fetched reasoning that the appeal can be revived in relation to the 1<sup>st</sup>, 4<sup>th</sup> and 10<sup>th</sup> respondents. The basic rationale to this reasoning is that there was no legally possible appeal commenced by the 1<sup>st</sup>, 4<sup>th</sup> and 10<sup>th</sup> respondents in the first place, as they were already deceased at the time of filing the Notice of Appeal.
17. This now leaves me with determining the fate of the 2<sup>nd</sup> and 8<sup>th</sup> appellants, Shokoret Ole Setabau and Ateti Ole Nkume. They died on 21<sup>st</sup> March 2019 and 29<sup>th</sup> July 2018 respectively, well within the pendency of the appeal. As I have observed hereinabove, Patrick Kirotie Tumanka has not demonstrated that he is a legal representative, or that he has an interest in this appeal. There is also no averment or a demonstration of sufficient cause which prevented the legal representatives who were issued with the grants of letters of administration from continuing with the appeal.
18. Again, in relation to prayer number 3, the Patrick has not succinctly told this Court the persons who are to specifically substitute the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> appellants.
19. Consequently, I am not satisfied that the applicant is entitled to the revival of the appeal and the substitution thereof, for reasons that the appeal was a nullity ab initio against the 1<sup>st</sup>, 4<sup>th</sup> and 10<sup>th</sup> appellants, and that no sufficient cause has been advanced by the legal representatives of 2<sup>nd</sup> and 8<sup>th</sup> appellants as to what prevented them from instituting the substitution proceedings soon.
20. The only prayer which succeeds in this appeal therefore, is the coming on record of Mr. John Mwariri advocate. Prayers 2 and 3 are accordingly dismissed.
21. It is trite law that costs will ordinarily follow an event. There are no reasons advanced as to why costs should not be granted. However, the application has partially succeeded in so far as prayer 1 of the Notice of Motion dated 22<sup>nd</sup> October 2023 is concerned whilst prayers 2 and 3 are dismissed. The latter prayers are the hallmark of the application. In the premise, the respondent shall be entitled to the costs, which shall be borne by the applicant, Patrick Kirotie Tumanka.

**DATED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**G. W. NGENYE – MACHARIA**

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**JUDGE OF APPEAL**

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

Signed

**Deputy Registrar**

