



**Mohammed Azhar s/o Mohamed Akram v Singh & 4 others (Civil Appeal (Application) 23 of 2019) [2024] KECA 580 (KLR) (24 May 2024) (Ruling)**

Neutral citation: [2024] KECA 580 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) 23 OF 2019  
DK MUSINGA, MSA MAKHANDIA & S OLE KANTAI, JJA  
MAY 24, 2024**

**BETWEEN**

**MOHAMMED AZHAR S/O MOHAMED AKRAM ..... APPLICANT**

**AND**

**HARDEV KALSI SINGH ..... 1<sup>ST</sup> RESPONDENT**

**THE ESTATE OF ILAM DIN S/O ILAM DIM (DECEASED) ... 2<sup>ND</sup> RESPONDENT**

**THE ESTATE OF MOHAMMED ASLAM S/O ILAM DIN  
(DECEASED) ..... 3<sup>RD</sup> RESPONDENT**

**ASGIRI D/O ILAM DIN ..... 4<sup>TH</sup> RESPONDENT**

**MOHAMMED AKHTAR ..... 5<sup>TH</sup> RESPONDENT**

*(An application from the Judgment and Decree of the Environment and Land Court at Nairobi (Mutungi, J.) delivered on 23rd July 2015 in ELC Case No. 186 of 2012 (OS))*

**RULING**

1. This ruling is in respect of the applicant's notice of motion dated January 28, 2019, which seeks an order of stay of execution of the judgment and decree issued by the Environment and Land Court (ELC) (Mutungi, J.), on July 23, 2015.
2. When the application came up for hearing on June 21, 2023 before Okwengu, Mativo & Ngenye-Macharia, JJ.A., the applicant was not in attendance. The Court was informed by the 1<sup>st</sup> respondent's advocate that the 1<sup>st</sup> respondent was dead and no application for substitution had been made. Consequently, the Court marked the application as having abated.
3. Despite the aforesaid order, the application was again listed for hearing on May 6, 2024. On that day, Ms. Farah Azhar, a relative of the applicant/appellant, was in attendance. She told the Court



that the appellant had also passed away. He died on March 8, 2021. There was no indication that any substitution had been done, and in any event, the application had already been marked as having abated.

4. Rule 102 of this [Court's Rules](#) provides as follows:

“ 102.

- (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.”

5. In view of the foregoing, it is clear that this appeal has abated.

The legal representatives of the deceased persons are however at liberty to apply for an order to revive the appeal, if they so wish. Ms. Farah Azhar does not have *locus standi* to prosecute the appeal or the pending application since she had not been substituted for the deceased appellant.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF MAY 2024.**

**D. K. MUSINGA, (P)**

.....

**JUDGE OF APPEAL**

**ASIKE-MAKHANDIA**

.....

**JUDGE OF APPEAL**

**S. ole KANTAI**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

SIGNED

**DEPUTY REGISTRAR**

