



**Kinyua (Suing as the legal representative of the Estate of Joseph Kinyua Mukiri - Deceased) & another v Waduna (Civil Appeal (Application) 180 of 2018) [2024] KECA 1364 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KECA 1364 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) 180 OF 2018  
S OLE KANTAI, JA  
OCTOBER 3, 2024**

**BETWEEN**

**MARY WAMUYU KINYUA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOSEPH KINYUA MUKIRI - DECEASED) ..... 1<sup>ST</sup> APPLICANT**

**CHRISTOPHER GATHUA MUKIRI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**EDITH WANGARI WADUNA ..... RESPONDENT**

*(An application for extension of time to Substitute the Deceased 1st Appellant in an appeal of the Judgment and Decree of the Environment and Land Court (A. Ombwayo, J.) dated 1st September, 2016 in E.L.C. No. 121 of 2017 Formerly HCC No. 142 of 2011 (OS).)*

**RULING**

1. The applicants Joseph Kinyua Mukiri and Christopher Gathua Mukiri have by Motion applied under rule 99 of the [Court of Appeal Rules](#), 2010:

- “ 1. That the time within which to make an application by Mary Wamuyu Kinyua, the legal representative of the deceased 1<sup>st</sup> appellant herein Joseph Kinyua Mukiri, to be made a party in this appeal in place of the deceased 1<sup>st</sup> appellant, the revival of the appeal and to proceed with the appeal be extended.
2. That this appeal be and is hereby revived.
3. That Mary Wamuyu Kinyua, the legal representative of Joseph Kinyua Mukiri (Deceased), be made a party in this appeal in the place of the deceased 1st appellant, the late Joseph Kinyua Mukiri and to proceed with the appeal in the place of the deceased 1st appellant.



4. That the costs of this application be in the appeal.”
2. The application is supported by grounds on its face and a supporting affidavit of Mary Wamuyu Kinyua where it is said that the original appellant, Joseph Kinyua Mukiri is deceased; that the applicant Mary Wamuyu Kinyua had obtained a limited grant to enable her be substituted as the 1st appellant; that the appeal has abated since is more than 1 year since the death of the 1<sup>st</sup> appellant and there is need to extend time for filing the application, revive the appeal and substitute the applicant in place of the deceased 1st appellant. Further, that the deceased died on 12<sup>th</sup> October, 2022 as it is shown by a copy of Certificate of Death; she was given a limited grant dated 9<sup>th</sup> August, 2024 by which time the appeal had abated; that she needs to continue the appeal on merit.
3. I have not seen a replying affidavit to the application.
4. I see a hearing notice dated 2<sup>nd</sup> September, 2024 at 1.02 p.m. where parties were notified of hearing date and required to file written submissions within the specified time. I have seen written submissions by the applicant but none by the respondent.
5. Rule 99 of the *Court of Appeal Rules*, 2010 (now rule 102 in the 2022 rules) provides on “Death of party to appeal”:  
“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.”
6. I am satisfied that the applicant is entitled to a time extension to enable her pursue the appeal that was filed by her husband who is now deceased. The appeal which had abated is hereby revived and shall be prosecuted by the applicant, Mary Wamuyu Kinyua, in place of her late husband. Costs of the Motion will abide the appeal.

**DATED AND DELIVERED AT NYERI THIS 3<sup>RD</sup> DAY OF OCTOBER, 2024.**

**S. OLE KANTAI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

