



REPUBLIC OF KENYA



**Ndwiga v Muthanje (Civil Appeal (Application) 40 of 2020)
[2024] KECA 1890 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KECA 1890 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) 40 OF 2020
AO MUCHELULE, JA
DECEMBER 20, 2024**

BETWEEN

MARIKO NDWIGA APPLICANT

AND

EDITH MUTHANJE RESPONDENT

(An application to revive the appeal and substitute the respondent in the appeal against the judgment of the Environment and Land Court of Kenya at Nyeri (Y.M Angima, J.) dated 16th January 2020 in ELC C.A No. 19 of 2019)

RULING

1. By an application dated 3rd September 2024 brought under Rules 4, 44, 55, 56, and 102 of the [Court of Appeal Rules 2022](#), and sections 3A and 3B of the [Appellate Jurisdiction Act](#) (Cap. 9), the applicant, Mariko Ndwiga, sought the extension of time for the joinder of the respondent's legal representative. Secondly, this court be pleased to enjoin John Nguu Gakindi as the respondent's legal representative.
2. The application is supported by the grounds inter alia: the respondent herein, Edith Muthanje, died on 22nd September 2020; the appeal has since abated against the respondent herein; and that on 21st September 2021 vide PMCC Succession No. E062 of 2021, John Nguu Gakindu was appointed as the respondent's legal representative. It was on these grounds that the applicant herein sought to have the legal representative enjoined as a party to the appeal.
3. Under Rule 104 of the [Court of Appeal Rules](#), it is provided *inter alia*
 - " 102. Death of party to appeal -
 - a. 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.

- b. 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.
- c. 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.
- d. An application under subrule (3) may be made before a single judge.”

- 4. From the evidence herein, the respondent died on 22nd September 2020. Vide Runyenjes Succession Cause No. E062 OF 2021, Nguu Gakindi was issued with a grant in respect of the respondent’s estate on 21st September 2021. The appeal against the respondent automatically abated against the respondent on 22nd September 2021. The applicant avers that *vide* letter dated 5th March 2024, his counsel inquired whether a grant had been issued with respect to the respondent’s estate, which information was not forthcoming from the counsel of the respondent.
- 5. No explanation has been offered by the applicant on the period between 21st September 2021 and 5th March 2024, on sufficient cause why the revival of the appeal and substitution of the respondent was not sought earlier.
- 6. Accordingly, I find no merit in the application, which I dismiss.
- 7. I make no orders as to costs.

DATED AND DELIVERED AT NYERI THIS 20TH DAY OF DECEMBER 2024.

A.O. MUCHELULE

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

