



**Ngutiku & another v M'Mugambi (Environment and Land Appeal  
28 of 2020) [2023] KEELC 70 (KLR) (18 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 70 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL 28 OF 2020  
CK NZILI, J  
JANUARY 18, 2023**

**BETWEEN**

**TERETHA MUTIMBI NGUTIKU ..... 1<sup>ST</sup> APPELLANT**

**GITONGA GIDEON MBURUGU ..... 2<sup>ND</sup> APPELLANT**

**AND**

**M'TWARUCHIU M'MUGAMBI ALIAS SILAS TUARUCHIU  
MUGAMBI ..... RESPONDENT**

**RULING**

1. Following the ruling delivered on October 5, 2022, a notice to show cause was issued for the appellant to explain why the main appeal should not be dismissed for non-compliance with the earlier court directives for the substitution following the death of the respondent. The orders were issued on October 26, 2021, extended on December 9, 2021 and March 7, 2022. When the notice to show cause came up on May 10, 2022, counsel present for the legal representative to the deceased defendant told the court that the deceased had no property to the suitland. Counsel's submission was that the appellant had shown no cause by way of an affidavit if the appeal was still sustainable hence the same was an exercise in futility.
2. Miss Mukaburu advocate on record for the appellant submitted that there were no inhibition orders at the lower court. That the sons of the deceased respondent were however the ones secretly dealing with the suit property.
3. Order 42 rule 35 of the [Civil Procedure Rules](#) provides that if after a year an appeal has not been set down for hearing, the same may be listed before the court for dismissal.
4. On July 6, 2021 the court was told that the respondent passed on in August 2021 and that the subject matter had been distributed to his sons before his death.



5. The appellant was given more than sufficient time to give the way forward. To date no way forward has been suggested by the appellant by way of substitution.
6. In *Nabro Properties Ltd vs Sky Structures Ltd & 2 others* (2003) 2 KLR 999, the court held that the author of a wrong who has put a person in a position in which he has no right to put him, shall not take advantage of his own illegal act or in other words, shall not avail himself of his own wrong.
7. The appellant has been aware of the status of the suit land even before the appeal was filed. The suitland was no longer in the name of the deceased as at October 27, 2020 but under the name of third parties.
8. In *Vyatu Ltd & another vs Public Trustee Nyanza Province* (2003) eKLR, the Court of Appeal dismissed an application for substitution of a deceased respondent with a public trustee and for the revival of an abated appeal due to effluxion of time since the public trustee had not been officially appointed through a grant of letters of administration or limited grant.
9. In this appeal, a year has already elapsed since the appellant was informed that the respondent had passed on.
10. In *Issa Masudi Mwabumba vs Alice Kavenya* (2012) eKLR the court was dealing with an application to revive an abated appeal. The court revived the appeal since the applicant had a limited grant.
11. In the instant appeal, there is no respondent or any efforts made by the appellant to bring on board any legal representative(s) to take up the brief. The court gave the appellant more than sufficient time to seek for the substitution but unfortunately, there has been no effort to comply with court directives including the citing the potential legal representatives to take up letters of administration
12. Consequently, I find the appeal ripe for dismissal on account of abatement and non-compliance with no orders as to costs. It is so dismissed.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT**

**THIS 18<sup>TH</sup> DAY OF JANUARY, 2023**

**In presence of:**

**C/A: Kananu**

Mukaburu for appellants

Chepkoech for Kaumbi for respondents

**HON C K NZILI**

**ELC JUDGE**

