



**In re Estate of Samson Ngure Gikandi (Deceased) (Succession Cause 9 of 2019) [2024] KEHC 11266 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11266 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
SUCCESSION CAUSE 9 OF 2019  
DKN MAGARE, J  
SEPTEMBER 26, 2024  
IN THE MATTER OF THE ESTATE OF SAMSON NGURE GIKANDI (DECEASED)  
PAUL KARUIRU WAMUGUNDA  
[SUING IN HIS CAPACITY AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF**

**BETWEEN**

**PAUL KARUIRU WAMUGUNDA [SUING IN HIS CAPACITY AS THE  
PERSONAL REPRESENTATIVE OF THE ESTATE OF WAMUGUNDA  
KABIRU] ..... APPLICANT**

**AND**

**NATHAN WARUTERE NGURE ..... RESPONDENT**

**RULING**

1. By a Chamber Summons dated 24/1/2024, the Applicant approached this court seeking to substitute the Protestor, Wamugunda Kabiru who is now deceased.
2. The Chamber Summons application is supported by the affidavit of the Applicant, Paul Karuiru Wamugunda, the proposed personal representative.
3. It is deposed that the Applicant is a son of the deceased who died on 31/10/2023 during the pendency of this suit.
4. The Applicant also states that he obtained letters of administration ad litem in Nanyuki Miscellaneous Application No. E002 of 2024.
5. The application is not opposed.



6. The law is set out under Order 24 Rule 4 of the [Civil Procedure Rules](#) for the substitution of the Legal Representatives of a deceased defendant as follows:

Procedure in case of death of one of several defendants or of sole defendant.

4.

- (1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the Legal Representative of the deceased

Defendant to be made a party and shall proceed with the suit.

- (2) Any person so made a party may make any defence appropriate to his character as Legal Representative of the deceased defendant.
- (3) Where within one year no application is made under sub rule (1), the suit shall abate as against the deceased defendant.
7. I have perused the certificate of death and the letters of administration ad litem as adduced vide the supporting affidavit of the Applicant. The deceased died on 31/10/2023 during the pendency of this suit and the Applicant, his son is now the administrator *ad litem*. As was held in [Sarah Kobilo Chebii & another v David K. Chesang](#) [2019] eKLR:

It is clear that even though the Civil Court had under the division of the Order XX III of the Civil Procedure Rules (Order 24 of the [Civil Procedure Rules](#), 2010, the power to substitute the Legal Representative of the deceased plaintiff or defendant such representative must be Legal Representatives within the meaning of the applicable law. In this regard Section 2 of [Civil Procedure Act](#) that Legal Representatives means a person who in law represent the Estate of a deceased person, that is to say a Legal Representative in the technical acceptation of the term.

8. The Applicant is therefore the personal representative of the deceased by virtue of the grant ad litem. It is trite law that a person to join as a party to the suit must be the Legal Representative of the deceased defendant. This had been the position since the Court of Appeal decision in [Trouistik Union International & Anor. v. Jane Mbeyu & Anor](#) Civil Appeal No. 145 of 1990 [1993] KLR 230 that the Legal Representative of the deceased is the person appointed as such by a Succession Court in accordance with the [Law of Succession Act](#).
9. Therefore, I find basis to allow the application and I proceed to allow it.

### **Determination**

10. In the upshot, I make the following orders:
- i. The deceased Protestor, Wamugunda Kabiru is hereby substituted with Paul Karuiru Wamugunda, his personal representative.
  - ii. Costs shall be in the cause.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2024.**



Ruling delivered through Microsoft Teams Online Platform.

**KIZITO MAGARE**

**JUDGE**

Represented by:

Wakarura Irungu & Co. Advocates for the Applicant

Respondent in person – present

Court Assistant – Jedidah

