



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERUGOYA

HIGH COURT CIVIL APPEAL NO. 35 OF 2013

MICHAEL WACHIRA GITABI.....APPELLANT

VERSUS

CHARITY MUTHONI GITABI.....1ST RESPONDENT

ANN MUTHONI.....2ND RESPONDENT

DIRECTIONS

1. The issue which is pending before this Court is directions on how the Appeal should proceed since the appellant passed away during the pendency of this appeal.
2. There are pending applications in Court and the substantive appeal has never been heard. An objection was raised by counsel for the respondents on the ground that the deceased appellant's widow Julia Wanjiru Gichangi has been issued with letters of administration in Succession Cause No. 37 of 2012 and has priority to administer his estate.
3. On 26th June, 2019 the court held that since the wife of the deceased had obtained a full Grant of letters of administration she be joined in this appeal to substitute the appellant.
4. The substituted appellant that is Julia Wanjiru Gichangi filed an affidavit sworn on 11th of October, 2019. In the affidavit she indicated that she did not wish to proceed with the Appeal.
5. The court directed Michael Wachira and the 2nd Respondent to file an affidavit in response within 14 days. They filed affidavits which I have considered.
6. The substituted appellant filed an affidavit on 6th of February, 2020 and at paragraph 4 of the affidavit she has stated that -

“Though the court ordered that I be substituted as the appellant since I had full grant of letters of administration in respect of my late husband I do not wish to pursue the matters on behalf of the family the late Gichangi.

That Michael Wachira Gitabi who is my brother in law is better placed to pursue this matter on behalf of his family.”

She has prayed that the court do exercise discretion and make an order substituting her name with that of Micheal Wachira Gitabi.

7. The court had ordered substitution of Julia Wanjiru Gichangi as the appellant, and in her affidavit she has stated that she has a full grant of letters of administration in the estate of her deceased husband.
8. The position in the matter is that the appellant has been substituted by the administrator of his estate.
9. It would seem the appeal has hit a snag as the substituted party does not seem to be interested in this appeal and has indeed applied to have it withdrawn and the other parties have not objected.
10. I direct that the parties to take a mention for further orders.

Dated, signed at Kerugoya 29th day of May 2020

L.W. GITARI

JUDGE