



**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC APPEAL NO. 19 OF 2013**

PERIS MUTHONI RUCATHI ..... APPELLANT/RESPONDENT

VERSUS

MURIITHI RUCATHI .....  
RESPONDENT/APPLICANT

**(AN APPEAL FROM THE JUDGMENT DELIVERED ON 14<sup>TH</sup> DECEMBER, 2006 BY HON. KIMUTAI K.T – Ag. S.R.M AT WANG’URU SENIOR RESIDENT MAGISTRATE’S COURT MISC. SUCC NO. 22 OF 2004)**

**RULING**

The respondent filed this Notice of Motion seeking the following orders:-

1. ***That the appeal herein be marked as having abated due to the death of the appellant***
2. ***That the judgment of Hon. Mr. Kimutai K.T. in Senior Resident Magistrate’s Court Wang’uru Misc. Succession Cause No 22 of 2004 delivered on 14<sup>th</sup> December 2006 be confirmed as valid***
3. ***That the respondent be allowed to execute the decree in the said judgment of Hon. Kimutai K.T. in Senior Resident Magistrate’s Court Wang’uru Misc. Succession Cause No. 22 of 2004.***
4. ***That the Estate of the appellant be condemned to pay the costs of this appeal and Wang’uru Misc. Succession Cause No. 22 of 2004.***

When the application came up before me on 3<sup>rd</sup> July 2014, Mr. Miano on behalf of the applicant and urged me to allow the application as it was un-opposed. Mr. Mwai holding brief for Ms Thungu for the respondent urged me to give her time to substitute the appellant and upon further enquiry, it transpired that the appellant died on 7<sup>th</sup> May 2013. It was then that Mr. Miano abandoned prayer No. 3 of the application but added that nonetheless, the appeal had abated.

I have considered the application. We are told that the appellant died on 7<sup>th</sup> May 2013. She has not been substituted yet. Under **Order 24 Rule 3 of the Civil Procedure Rules**, she ought to have been ***“substituted within one year”*** otherwise the appeal abates. **Order 24 Rule 9 of the Civil Procedure Rules** makes it clear that the requirement of substitution within one year applies both to appeals and suits that may be pending trial.

From the above, it is clear that since the appellant died on 7<sup>th</sup> May 2013 and has not yet been substituted, this appeal has abated and it will serve no purpose to adjourn the matter in the guise of giving Ms Thungu time to substitute the appellant.

The application is therefore allowed in terms of prayer 1 and 2. Prayer 3 was abandoned at the hearing

and I see no need to condemn the Estate of the appellant to pay any costs.

It is so ordered.

**B.N. OLAO**

**JUDGE**

**31<sup>ST</sup> JULY, 2014**

31/7/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Kahiga for Gacheche for Appellant/Respondent – present

Ms Thungu for Respondent/Applicant – present

COURT:

Ruling delivered this 31<sup>st</sup> day of July 2014 in open Court

Ms Thungu for Respondent present

Mr. Kahiga for Mr Gacheche for Applicant present.

**B.N. OLAO**

**JUDGE**

**31<sup>ST</sup> JULY, 2014**