



1. *Civil Appeal*
2. *Civil Practice & Procedure*
3. *Subject of main subordinate Courts suit:-*
  - a. *Employee/employer*
  - b. *Contract/tenancy*
  - c. *Employee's suit dismissed*
  - d. *Applicant files appeal against employer on 26 May 2009*
  - e. *Appellant demise on 31 May 2011 at Kakamega*
4. *Application dated 25 My 2011.*
  - a. *Leave to substitute deceased appellants with legal representative*
  - b. *Respondent served – absent*
5. *Held:*

- a. *Application granted*
- b. *Leave be and is hereby granted to substitute the deceased with the legal representative.*
6. *Case Law*
7. *Advocates*
- i. *C. Njoroge instructed by the firm of M/s Lesinko & Njoroge Advocates for the /applicant/appellant/original plaintiff – present*
- ii. *M/s Wauna Oluoch & co. Advocate for the Respondent/Respondent/original defendant – served but absent*

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO.259 OF 2009**

**EDESA L. MUNIALO.....APPLICANT/APPELLANT/  
ORIGINAL PLAINTIFF**

**VERSUS**

**KENYA AGRICULTURAL RESEARCH  
INSTITUTE.....RESPONDENT/RESPONDENT/ORIGINAL DEFENDANT**

***(Being an appeal from judgment and decree of Hon. Mr. M. K. Kiema Esq, Resident Magistrate,  
Milimani Commercial Courts, Nairobi.***

***Delivered on 17<sup>th</sup> June, 2008 in Civil suit No. 2)***

**RULING**

**I. INTRODUCTION**

1. The appellant/original plaintiff (now deceased) had sued her employer in the subordinate Courts at Nairobi. She lost her case but being dissatisfied with the said decision, she appealed to this High Court of Kenya at Nairobi on 26 May 2009.
2. Unfortunately on 31 may 2011, the appellant passed away at the Aga Khan Hospital, Kisumu.

3. Her legal representative now files application under Order 24 Rule 1 3(1) Civil Procedure Rules seeking to be substituted in this appeal.

## **II. APPLICATION 25 MAY 2011**

4. The rules require that this application be done within 12 months. The applicant stated that it took about one year to apply for grant of letters of administration intestate from the High Court of Kenya at Kakamega. As soon as the grant was issued, this application was issued upon the other party who failed to attend court.

5. The main prayers is for the legal representative be substituted in order to proceed with this appeal.

6. The application is a legal requirement. The court has to satisfy itself that the legal representative has taken out grant of letters of administration intestate or limited grant *ad litem*. The latter grant being for filing suit only and or continuing with a deceased legal matter.

7. The same having been complied with, the application is hereby granted.

8. There will be no costs awarded to the respondent as they are served but are absent.

**RULING DATED THIS 3<sup>RD</sup> DAY OF JUNE 2011 AT NAIROBI.**

**M. A. ANG'AWA**

**JUDGE**

*Advocates*

i. *C. Njoroge instructed by the firm of M/s Lesinko & Njoroge Advocates for the /applicant/appellant/original plaintiff - present*

ii. *M/s Wauna Oluoch & co. Advocate for the Respondent/Respondent/original defendant – served but absent*