



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL APPEAL NO. 253 OF 2002

**STEPHEN KIIRU MUTUVA.....APPELLANT/
ORIGINAL/DEFENDANT**

VERSUS

**JANE WAITHERA MUNGAI.....RESPONDENT/
ORIGINAL PLAINTIFF**

Editorial Summary

1. *Civil Appeal*
2. *Civil Practice and Procedure*
3. *Subject of Subordinate Court Case*

RESTITUTION

- 3.1 *Respondent/original plaintiff
Distressed over alleged debt owed and or
Misappropriated*
- 3.2 *sued appellant/original defendant in
Subordinate court*
- 3.3 *Judgment for respondent 30th April 2002*
- 3.4 *appellant original defendant appeals on
29th May 2002 to the High Court*
- 3.5 *appeal dismissed suit later set aside
8th December 2004*
- 3.6 *since 1992, no lower court record*
- 3.7 *On 18th September 2010
Respondent original plaintiff passes away*
4. *Application 12th July 2011*

*Order 24 r 1 and 4 Civil Procedure Rules to
Substitute the deceased with a legal representation
Respondent served*
5. *Held:*

Application granted.

6. *Case Law:*

7. *Advocates :*

i) *C M Ngugi instructed by M/s Wachira Nderitu & Ngugi & Co Advocates for appellant*

ii) *M/s Mutua Mbugua & Co Advocates for respondent absent*

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(Being an appeal from the entire judgment of the Resident Magistrate Thika, Mr Ngari dated 30th April 2002 in Civil Case No. 1086 of 2002)

RULING

Application To Substitute Deceased with a Legal Representation

I. BACKGROUND

1. The respondent/original plaintiff filed suit in the subordinate court on 26th October 2001. She sued the appellant/original defendant for restitution on grounds that she had been wrongly distressed when all her goods were attached and sold.

2. The trial magistrate entered judgment for the respondent/original plaintiff on the 30th April 2002.

3. Being dissatisfied with the judgment of the subordinate court, the said appellant/original defendant filed appeal to this High Court on 29th May 2002. The appeal was dismissed by Visram J but was later set aside on 8th December 2005.

4. Since 2002, no action had been taken on this matter. No lower court file had been brought to this High Court.

5. Unfortunately on the 18th September 2010 the respondent original plaintiff passed away.

II APPLICATION OF 12TH JULY 2011

6. Under Order 24 r (1) and (4) Civil Procedure Rules, the advocate for the appellant prayed that the appellant herein be substituted in place of the deceased, as a legal representation.

7. The deceased passed away on the 18th September 2010 and letters of grant al Litum were duly issued.

8. The appellant/original defendants were served through their advocates and are absent.

III FINDINGS

9. The application is hereby granted. Leave be is hereby granted to the applicant to come or record on behalf of the deceased as a legal representative.

DATED THIS 30TH DAY OF SEPTEMBER 2011 AT NAIROBI

M.A. ANG'AWA
JUDGE

Advocates :

- i) Z. J. Mohammed instructed by M/s Archer & Wilcox & Co Advocates for the Appellant*
- ii) A.M. Simiyui instructed by M/s Musyoka Wambua & Co Advocates for the 2nd Respondent*
- iii) F S Macharia instructed by the firm of Mungai Kalande & Co Advocates for the 1st respondent*