

REPUBLIC OF KENYA

IN THE HIGH COURT

AT KAKAMEGA

SUCCESSION CAUSE 123 OF 1997

IN THE MATTER OF THE ESTATE OF MARUTI TARAKWA - DECEASED

BETWEEN

BEATRICE CHEBENDI HENRY -----PETITIONER/RESPONDENT

VERSUS

NELSON MIKISI MARUTI ----- OBJECTOR/DECEASED

ANDBe

NDIWA NELSON MARUTI ----- APPLICANT

RULING

1. The Application dated 27.10.2006 seeks orders that **Ndiwa Nelson Maruti** be made a party to these proceedings in place of Nelson Mikisi who has since died.
2. It is the Applicant's case that he is the son of the deceased Objector and that he is best placed to pursue his father's claim in the Succession matter relating to the estate of one Maruti Tarakwa (deceased). That because the Objection Proceedings were commenced on 28.9.1999 and his father died on 5.3.2004, it would help expedite the conclusion of the dispute if the Application for substitution is allowed.
3. The Petitioner/Respondent Beatrice Chebendi Henry filed no response but her advocate, one Morris Indakwa Buluma filed a Replying Affidavit sworn on 2.6.2009 and depones that the Applicant lacks **locus standi** to present the Application and that the Respondent will be greatly prejudiced if the orders sought are granted.
4. I will quickly dispose of the Application by stating that Mr. Buluma's response is sadly vague and unclear and the alleged prejudice to his

client is unexplained. In any event, how would he know what prejudice his client would suffer without stating so?

5. My view is that with the death of the Objector, his son can quickly fill up his shoes for purposes of pursuing the Objection proceedings. Under Rule 73 of the Probate and Administration rules this court has power to **“make such orders as may be necessary for the ends of justice”** to be met and this case is fit for those orders to be made.
6. In the event, I will allow Prayer 1 of the Application dated 26.10.2006 and Ndiwa Nelson Maruti shall become the Objector in place of Nelson Mikisi Maruti (deceased)
7. Costs shall be in the cause.
8. Orders accordingly.

Delivered, Dated and Signed at Kakamega this 15th day of April, 2010.

ISAAC LENAOLA

J U D G E