

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Appeal 55 of 1997

DEVJI LALJI & 4 OTHERS.....APPELLANT

VERSUS

ABDULAZIZ JUMA OMAR.....RESPONDENT

RULING

This application was lodged by the firm of M/S Kiarie Kariuki & Company advocates purportedly on behalf of Abdulaziz Juma Omar, the respondent. It seeks one prayer, apart from costs, namely that the court be pleased to order that the appeal herein has abated due to the death of the respondent. The application is supported by an affidavit sworn by one Mohamed Kassim Abdulaziz who has deponed that he is the son of the late Abdulaziz Juma Omar, the respondent. Annexed to the application is a death certificate in respect of the respondent.

The application is opposed, on the basis of Grounds of Opposition filed by counsel for the appellant in which it is contended that as the respondent is deceased and no legal representative appointed to administer his estate, the advocate who lodged the application had no *locus standi* to bring the application.

When the application came up before me for hearing, counsel agreed to file written submissions which were in place by 24th June 2009.

I have considered the application and the submissions of counsel. Having done so, I have come to the conclusion that the application is incompetent having been filed without instructions of the legal representative of the deceased. I would have thought that it is elementary that an advocate can only act with instructions of a living person. Having expressly been informed of the death of the respondent, the advocate should have known that he would only act on instructions of the Legal Representative of the deceased and not those of a busy body. There are no short cuts. If the deponent of the supporting affidavit desires to seek any orders of the court he must clothe himself with the authority to do so.

This application is struck out with costs.

DATED AND DELIVERED AT MOMBASA THIS 28TH DAY OF JULY 2009.

F. AZANGALALA

JUDGE

Read in the presence of:-

Mr. Matheka holding brief for Mwakireti for the Respondent and Mr. Nyaberi holding brief for Kasmani for the Appellant.

F. AZANGALALA

JUDGE

28TH JULY 2009