



IN THE HIGH COURT OF KENYA  
AT NAIROBI  
CIVIL APPEAL NO 538 OF 2003  
BROOKE BOND (K) LTD ..... APPELLANT  
VERSUS  
MATHEW OGWENO OWITI ..... RESPONDENT  
RULING

In this application, the Respondent seeks to strike out this appeal, and for the funds (decretal amount) presently held in the joint account of the Advocates to be paid to the Respondent on the grounds that the appeal is incompetent as it has been filed against a dead person. In a supporting affidavit sworn by one Imelda Aoko Owiti, it is deponed that the Respondent is deceased, and that the funds should be released to her. If the Respondent is indeed dead, this application should have been brought by his Estate. Just as a suit against a deceased person is incompetent, so is an application by a deceased person to strike out the suit. The funds cannot be released to a third party – only to the Estate of the Deceased.

Accordingly, the application before me is incompetent and is struck out. As the application was not defended, I make no order as to costs.  
**Dated and delivered at Nairobi this 14th day of July, 2004.**

**ALNASHIR VISRAM**  
**JUDGE**