



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA**

**ELC APPEAL NO. 18 OF 2019**

**RICHARD NAPWORI KIKWE..... APPELLANT**

**VERSUS**

**SELINA NASIKE KIKWE IKWE..... RESPONDENT**

**R U L I N G**

When this appeal came up on 29<sup>th</sup> October 2020 following the directions of the Deputy Registrar dated 28<sup>th</sup> October 2020, **MR MURUNGA** Counsel for the Respondent urged me to order that this appeal has abated following the demise of the Respondent on 15<sup>th</sup> November 2017.

Since the Appellant is now acting in person having filed a Notice to that effect on 21<sup>st</sup> September 2020, I directed that **MR MURUNGA** files a formal application and submissions to be served within 14 days. The Appellant would also have 14 days from the date of service to respond. However, by the time file was placed before me on 25<sup>th</sup> November 2020 to draft the ruling, only the Respondent had complied.

Following my directions, Counsel for the Respondent filed a formal application premised under the provisions of **Order 24 Rule 4(1)(3)** and **9** of the **Civil Procedure Rules** seeking the following orders: -

**1: The appeal be marked as abated.**

**2: Costs be provided for.**

The application is premised on the grounds that the Respondent died on 15<sup>th</sup> November 2017 and has not been substituted. A copy of the Respondent's Death Certificate was annexed confirming that he died on 15<sup>th</sup> November 2017.

When he appeared before me on 29<sup>th</sup> October 2020, the Appellant did not deny the fact that the Respondent was deceased. He said that infact the Respondent died in 2016 and not on 15<sup>th</sup> November 2017 as alleged.

Having perused the Death Certificate annexed to the application, it is not in doubt that infact the Respondent died on 15<sup>th</sup> November 2017. It is clear from the provision of Order 24 of the Civil Procedure Rules which deal with abatement of suits where the plaintiff or defendant dies and is not substituted within one year, that the same applies to appeals. The Respondent herein died on 15<sup>th</sup> November 2017 and therefore, by operation of the law, this appeal abated one year later. Therefore, on 15<sup>th</sup> November 2018, this appeal abated. The Appellant confirms that he is aware about the demise of the Respondent who he however claims died one year earlier in 2016. The Court will of course abide by the contents of the Death Certificate which confirms the exact date of death as 15<sup>th</sup> November 2017. The Appellant has all along been aware that the Respondent is deceased but has not taken any action towards saving his appeal.

Ultimately therefore, this Court makes the following orders: -

**1. This appeal is marked as abated.**

**2. No orders as to costs.**

**Boaz N. Olao.**

**J U D G E**

**18<sup>th</sup> January 2021.**

**Ruling dated, signed and delivered at BUNGOMA this 18<sup>th</sup> day of January 2021** by way of electronic mail in keeping with the **COVID – 19** pandemic guidelines.

**Boaz N. Olao.**

**J U D G E**

**18<sup>th</sup> January 2021.**