



**Rapemo v Orech (Environment and Land Appeal E015 of 2024)  
[2025] KEELC 5044 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 5044 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT AND LAND APPEAL E015 OF 2024  
FO NYAGAKA, J  
JUNE 11, 2025**

**BETWEEN**

**FLERIA OPIYO RAPEMO ..... APPELLANT**

**AND**

**KENNETH OUKO ORECH ..... RESPONDENT**

**RULING**

1. This is a ruling in respect of the application dated 18<sup>th</sup> February 2025 brought by one Momento Onyango Rapemo (the applicant) on behalf of the appellant's estate, in which she seeks to be substituted for the appellant who is said to have died.
2. The application is brought *vide* Section 1A & 3A of the [Civil Procedure Act](#), Order 1 Rule 10 & Order 24 Rules 1, 2 & 3 of the [Civil Procedure Rules 2010](#).
3. The applicant avers that he is the son of the appellant who died on the 29<sup>th</sup> July 2024, which was 3 months and 5 days after lodging the instant appeal *vide* a Memorandum of Appeal dated 24<sup>th</sup> April 2024, and having obtained Letters of Administration ad litem on the 5<sup>th</sup> February 2025 in *Misc. Succession Case No. E007 of 2025*, he now seeks to be granted the authority to substituted for the appellant herein for the purpose of proceeding with the instant suit.
4. The application is opposed by the respondent vide his replying affidavit dated sworn on the 3<sup>rd</sup> March 2025 in which he stated that the instant application had been made in faith and was highly vexatious.
5. That the applicant had filed a similar application dated 28<sup>th</sup> October 2024 which he opposed *vide* his Grounds of Opposition dated 6<sup>th</sup> January 2025 but that the applicant had subsequently withdrawn the said application *vide* a Notice of Withdrawal dated 27<sup>th</sup> January 2025.



6. The application was disposed by way of written submissions which both parties filed and which I have duly considered. The only issue for consideration is whether the applicant merits grant of the orders sought.
7. The effect of death of a plaintiff with a pending suit is as provided for under Order 24 Rule 3 of the [Civil Procedure Rules](#) states that;
  - “ 1. Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.
  2. Where within one year no application is made under sub rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff: Provided the court may, for good reason on application, extend the time.”
8. It is clear from the certificate of death number 1311976 attached to the applicant’s supporting affidavit that the appellant died on the 29<sup>th</sup> July 2024. The applicant obtained Letters of Administration ad litem on the 5<sup>th</sup> February 2025 in *Misc. Succession Case No. E007 of 2025*.
9. Under Order 24 Rule 3 of [Civil Procedure Rules](#), the legal representative of the deceased is required to have made the application for substitution within a year of his death, that is by 29<sup>th</sup> July 2025 and as such the applicant herein is within time. The substitution is made once the legal representative is granted letters of administration. The Applicant has demonstrated through the copy of the Grant of Letters of Administration Ad Litem annexed as MOR 2 to the supporting affidavit.
10. The respondent has faulted the applicant, in his pleadings and submissions, on moving this court vide the instant application on grounds that it was done in bad faith as he had filed a prior similar application dated 28<sup>th</sup> October 2024 but had since withdrawn it.
11. I see no issue with the previous application filed by the applicant, the said application was not heard and determined and thus by bringing forth the instant application the applicant has not run afoul of doctrine of *res judicata*.
12. The respondent also seemed to impugn the Letters of Administration Ad Litem granted to the applicant on account that it refers to a different name from that of the appellant. I have perused the said letter of administration and find that it properly refers to the appellant. The deceased appellant herein is Fleria Opyo Rapemo. The Grant of Letters of Administration refer to one Fleria Opiyo Rapemo alias Fleria Akeyo. This is the deceased person whom the applicant sought to represent in the application for Grant of Letters Ad Litem. This person is said to have died on 29/07/2024.
13. Whereas the Respondent argues that the deceased referred to in the copy of the certificate of death annexed to the previous application which the applicant withdrew this Court does not agree with him. In that previous document, it referred to the same person who died. The difference between that certificate and annexure MOR 2 in regard to the age of the parties is that in the previous one, instead of the date of death being written in full and correctly as 29/07/2024 it was typed incorrectly as 29 years. This is what the Respondent refers to as the age of the deceased whereas the document shows



clearly at the place of “Age” that it was indicated “NA”. The Respondent should not take advantage of typographical errors to place a deceased person among the living by insisting that the deceased referred to in the certificate of death is different from the appellant sought to be substituted yet the said person is long dead. Let the dead rest and wait for the last trumpet sound so that they awake to either eternal life or condemnation.

14. In the circumstances, I am satisfied that the Applicant has established sufficient grounds to warrant the grant of the orders sought.
15. The applicant is thus allowed to substitute the deceased appellant, Fleria Opiyo Rapemo, and proceed with the suit as the personal representative of her Estate. Further he is granted leave to amend the Memorandum of Appeal with the aforesaid substitution within the next fourteen (14) days and serve. He is also directed to file the decree and record of appeal within the next forty five (45) days. Mention on 18<sup>th</sup> September, 2025 for further dictions.
16. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED VIA THE TEAMS PLATFORM THIS 11<sup>TH</sup> DAY OF JUNE 2025.**

**HON. DR. *IUR* NYAGAKA**

**Judge**

Ms. Wabwire Advocate for the Appellant Applicant

Anyul Advocate for the Respondent

