



**Leopre & 2 others v Mpetti (Civil Appeal 12 of 2019)  
[2025] KEHC 12824 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12824 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CIVIL APPEAL 12 OF 2019  
CM KARIUKI, J  
SEPTEMBER 19, 2025**

**BETWEEN**

**TOBIKO OLE LEOPRE ..... 1<sup>ST</sup> APPELLANT**

**TIPAPA OLE NAIMODU ..... 2<sup>ND</sup> APPELLANT**

**JOHN KADID LENGUES, SUING AS THE LEGAL ADMINISTRATOR AD  
LITEM OF THE ESTATE OF TIPAPA OLE LENGUES ..... 3<sup>RD</sup> APPELLANT**

**AND**

**SAMUEL SEKEROT OLE MPETTI ..... RESPONDENT**

*(Being an appeal against the Judgment delivered by Hon. Wilbroda  
Juma on 19th March, 2019, in Narok CMCC NO. 13 OF 2016)*

**RULING**

**Procedural History**

1. On 15th June 2022, this Court (Gikonyo J.) allowed an application for the substitution of the 3rd appellant. Subsequently, it was brought to the Court's attention that the respondent, Samuel Sekerot Ole Mpetti, had passed away. On 21st January 2025, Mr. Ombati, learned counsel for the Appellants informed the Court that the respondent had died in July 2021 and sought time to consult on the issue of abatement. On 12th February 2025, counsel clarified that the respondent had died on 25th June 2021. To date, no application for substitution of the deceased respondent has been filed.

**The Law on Abatement**

2. The applicable provisions are found in Order 24 of the Civil Procedure Rules, 2010.



3. Rule 1 provides:

“The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues.”
4. Rule 3(2) stipulates:

“Where, within one year, no application is made under subrule (1), the suit shall abate as against the deceased defendant.”
5. Rule 7(2) adds:

“The plaintiff or the person claiming to be the legal representative of a deceased plaintiff ... may apply for an order to revive a suit which has abated ... if it is proved that he was prevented by any sufficient cause from continuing the suit.”
6. Rule 9 further provides that the above provisions apply *mutatis mutandis* to appeals.
7. The jurisprudence is clear that abatement is automatic upon lapse of one year from death, unless revival is sought.
8. In *Said Sweilem Gheithan Saanum v Commissioner of Lands & 5 Others* [2015] eKLR, the Court of Appeal held at paragraph 18:

“There are three stages according to these provisions. ... within one year of the death of the plaintiff or defendant, an application must be made for the legal representative ... If no such application is made within one year ... the suit shall abate. ... Revival is only possible upon application and sufficient cause being shown.”
9. The Court stressed at paragraph 20 that abatement is not dependent on a court order but occurs *ipso jure* by operation of law.
10. Similarly, in *Kenya Farmers’ Co-operative Union Ltd v Charles Murgor (Deceased) t/a Kiptabei Coffee Estate* [2005] eKLR, the Court of Appeal underscored that once the one-year period lapses without substitution, the proceedings abate automatically, and the only recourse is to move the court under Order 24 Rule 7(2) for revival upon showing sufficient cause.

### **The Memorandum of Appeal**

11. The appellants filed a memorandum of appeal dated 2019 raising thirteen grounds faulting the trial court’s judgment. They contend that the trial magistrate erred by entering judgment unsupported by evidence, disregarding the defence case, misapprehending the agency agreement, and generally misdirecting herself in law and fact.
12. Ordinarily, as a first appellate court, this Court would be obliged to reconsider and re-evaluate the evidence, guided by the principles in *Selle v Associated Motor Boat Co. Ltd* [1968] EA 123 at p.126, where the Court of Appeal stated that a first appellate court must “reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses.”
13. However, the right to ventilate those grounds presupposes a subsisting *lis* between living parties. With the death of the sole respondent on 25th June 2021 and no substitution having been made within



the statutory period, the appeal cannot proceed in the absence of a respondent. The substratum is extinguished.

14. In light of the above, I find that this appeal abated by operation of law under Order 24 Rule 3(2) of the Civil Procedure Rules. No application has been filed to revive the appeal under Rule 7(2), nor has sufficient cause been shown to warrant exercise of discretion.

Orders

- i. The appeal herein stands abated as against the deceased respondent, Samuel Sekerot Ole Mpetti.
- ii. Each party shall bear their own costs.
- iii. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS  
19<sup>TH</sup> DAY OF SEPTEMBER, 2025**

.....

**CHARLES KARIUKI**

**JUDGE**

