



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL APPEAL NO. 94 OF 2017

JACINTA WAIRIMU KARUGA.....APPELLANT

VS

MARGARET NJOKI KARUGA.....RESPONDENT

RULING

1. The application under consideration is dated 30th July, 2019. It was filed on behalf of **MARGARET NJOKI KARUGA (Margaret)**. By an affidavit dated 2nd December, 2019, Jacinta Wairimu Karuga (Jacinta) the respondent deponed that Margaret died on 22nd September, 2019. That deposition is not controverted and what I find difficult to understand is that an advocate, Ms. Wambura holding brief for Mr. Njuguna, appeared before me on 22nd April, 2021 and she together with counsel for Jacinta requested that a ruling on the application be delivered on the basis of affidavit evidence. Ms. Wambura did not inform the court that her client, Margaret, had passed away.

2. In view of the fact that the assertion that Margaret had passed away was not controverted, it follows that the Notice of Motion application dated 30th July, 2019 cannot be entertained unless someone is appointed as personal representative of her estate and then that person be substituted in the action instead of Margaret as provided under **Section 82(a)** of the Law of Succession Act and as per **Rule 24** of the Civil Procedure Rules.

3. It follows therefore the application cannot proceed. I wish to rely on a Court of Appeal decision of 1997 in the case **FREDRICK WACHIRA NDEGWA (SUBSTITUTING NDEGWA WACHIRA (DECEASED) VS. RICHARDA WANJIKU NDANJERU & ANOR (1997) eKLR** as follows:-

“The Act came into force on the 1st July, 1981. The person whose death and succession gave rise to this suit, namely, John Katembe, died on the 10th April, 1984. To determine who may agitate by suit any cause of action vested in him at the time of his death, one must turn to Section 82 (a) of the Law of Succession Act. That Section confers that power on personal representatives and on them alone. As to who are personal representatives within the contemplation of the Act, Section 3 the interpretative section, provides an all-inclusive answer; It says, ‘personal representative means executor or administrator of a deceased person’”.

DISPOSITION

4. In view of the above discussion the Notice of Motion dated 30th July, 2019 is hereby struck out with no orders as to costs.

RULING DATED AND DELIVERED AT KIAMBU THIS 10TH DAY OF JUNE, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

For the Appellant : No appearance

For the Respondent : Ms. Githunka

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE