

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: GICHERU, KWACH & SHAH, JJ.A.)
CIVIL APPEAL NO. 268 OF 1997
BETWEEN

NJUGUNA KIUMU APPELLANT
AND
SIMON P. GICHURU RESPONDENT

ORDER OF THE COURT

This appeal is incompetent because the named appellant Njuguna Kiumu died on 25th November, 1987 and no steps were taken under Order 23 rule 3(1) of the Civil Procedure Rules or rule 93 of the Rules of this Court to cause the legal representative of Njuguna Kiumu to be made a party either in the suit in the superior court, or in this appeal. That being the case this appeal is hereby struck out with no order as to costs.

As the appellant was already dead on the date of trial, there was really no plaintiff in the suit. Those proceedings before the Judge including his final decision were a nullity and it is so declared. Made at Nakuru this 24th day of February, 1999.

J. E. GICHERU
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JUDGE OF APPEAL

R. O. KWACH
.....
JUDGE OF APPEAL

A. B. SHAH
.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.
DEPUTY REGISTRAR