

IN THE COURT OF
APPEAL AT NAKURU
(CORAM: WARSAME, J.A. IN
CHAMBERS) CIVIL APPLICATION NO.
64 OF 2016 BETWEEN

LEMITA OLE LEMEIN.....APPEALANT
AND
LEKINYOT OLE LANKE.....1ST
RESPONDENT ATTORNEY GENERAL.....
2ND RESPONDENT LAND REGISTRAR,
NAROK COUNTY.....3RD RESPONDENT

(Being an application for substitution of the 1st Respondent in an appeal from the judgment and decree of Environment and Land Court at Nakuru (Munyao, J) dated 30th November, 2020

in

ELC Petition No. 35 of 2014)

RULING

1. Before me is an application dated 30th November 2020 filed by Simon Sayialel Lanke seeking substitution as the 1st respondent in place of his deceased father, Lekinyot Ole Lanke, pursuant to Rule 102 of the Court of Appeal Rules. The application is supported by an affidavit sworn on 30th November 2020.

2. The circumstances giving rise to this application are that the original 1st respondent, Lekinyot Ole Lanke, was a party to proceedings in the Environment and Land Court at Nakuru in which he successfully challenged the proceedings of a Land Disputes Tribunal and the Narok Senior Principal Magistrate's Court relating to land parcel CIS-Mara/Oldonyo Rasha/377 measuring approximately 50 acres. The Appellant, dissatisfied with that decision, filed an appeal before this Court.
3. Unfortunately, the 1st respondent passed away on 24th February 2020 while the appeal was still pending before the Court, with judgment reserved. Subsequently, on 9th October 2020, this Court delivered judgment dismissing the appeal and upholding the trial court's decision in favor of the deceased 1st respondent, with costs awarded to him. Shortly thereafter, on 17th October 2020, the Appellant filed a notice of appeal seeking to challenge this Court's decision before the Supreme Court.
4. The reasons for seeking substitution as stated in the application are threefold: first, the deceased was awarded

costs by this Court which need to be assessed and recovered; second, the

estate wishes to execute the decree in the ELC in its favor; and third, a legal representative is required to oppose any applications that may be made by the Appellant in relation to the intended Supreme Court appeal

5. Rule 102 of the Court of Appeal Rules, provides that an appeal shall not abate on the death of a party, and that the Court shall, on application, cause the legal representative of the deceased to be made a party in place of the deceased. The rule further stipulates that if no application is made within twelve months from the date of death, the appeal shall abate.
6. I have considered the application, the supporting documents, and the applicable legal principles. The death of the 1st respondent is incontrovertibly established. The applicant has demonstrated his status as legal representative through the limited grant of administration pendente lite, which was properly obtained from the High Court at Narok on 4th November 2020 in Succession Cause No. E001 of 2020, specifically for the purpose of continuing these proceedings.
7. Significantly, the application was filed on 30th November

2020, well within the twelve-month period prescribed by Rule 102(2),

demonstrating diligence on the part of the estate's representatives. The application was made promptly after obtaining the necessary grant, approximately three weeks thereafter.

8. Consequently, I am satisfied that this is a proper case for the exercise of the Court's discretion under Rule 102(1) of the Court of Appeal Rules.
9. In the result, the application is hereby allowed. The name of the 1st respondent, Lekinyot Ole Lanke (deceased), is hereby substituted with that of Simon Sayialel Lanke, suing as the legal representative of the estate of Lekinyot Ole Lanke (deceased). The substituted 1st respondent is deemed to be a party to these proceedings for all purposes. I make no orders to cost.

Dated and delivered at Nakuru this 21st day of October, 2025.

M. WARSAME

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR