

**IN THE COURT OF**  
**APPEAL AT**  
**NAKURU**

**(CORAM: WARSAME, J.A. IN**  
**CHAMBERS) CIVIL APPLICATION NO.**  
**E 003 OF 2024**

**BETWEEN**

**PETER KIPNGETICH RONO.....1<sup>ST</sup> APPELLANT**

**RAYMOND KIPKEMOI RONO.....2<sup>ND</sup>**

**APPELLANT GEOFREY KIPKEMOI RONO.....3<sup>RD</sup>**

**APPELLANT**

**MARYLINE CHEPNGETICH.....4<sup>TH</sup> APPELLANT**

**AND**

**EDWIN KIPKOECH BIEGON.....APPLICANT/RESPONDENT**

***(An application for substitution of the Respondent )***

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**RULING**

1. This is an application dated 22nd July 2025 seeking orders to substitute the deceased (original respondent), Edwin Kipkoech Biegon, with Florence Biegon as the respondent in this appeal. It is brought under Order 24 Rule 4 of the Civil Procedure (deceased).

2. The application is supported by the affidavit of Florence Biegon sworn on 22nd July 2025. The undisputed facts are as that

Edwin Kipkoech Biegon, who was the respondent in this appeal, passed away on 6th March 2024. Subsequently, Florence Biegon obtained a Limited Grant of Letters of Administration Ad Litem of the estate of the deceased on 3rd June 2024. The grant was limited to the purpose of collecting the deceased's assets and substituting the deceased person in the suit at Kericho Environment and Land Court.

3. The appellants, through their replying affidavit sworn by Peter Kipngeti on 6<sup>th</sup> August 2025, oppose the application on various grounds. The appellants contend, inter alia, that the Limited Grant of Letters of Administration Ad Litem did not have the a chiefs' letter to warrant its authenticity, the applicant seeks to arrogate herself as the sole administrator without the knowledge of other beneficiaries of the deceased's estate and that the present application was instituted without leave of court to replace the firm of M/S Obondo Koko & Company Advocates with their current advocates.
4. This application is governed by Section 102 of the Court of Appeal Rules, which provides for the procedure to be

followed

upon the death of a party to an appeal. Section 102 stipulates as follows:

*(1) An appeal shall not abate on the death of the appellant or respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased person to be made a party in place of the deceased.*

*(2) If no application is made under subrule (1) within twelve months from the date of the death of the appellant or respondent, the appeal shall abate.*

*(3) The person claiming to be the legal representative of a deceased party or an interested party to an appeal may apply for an order to revive an appeal which has abated and, if it is proved that the legal representative was prevented by sufficient cause from continuing the appeal, the court shall revive the appeal upon such terms as to costs or otherwise as it deems fit.*

5. The deceased passed away on 6th March 2024. The application before this court was filed on 22nd July 2025. This is approximately sixteen months and sixteen days after the death of the original respondent. Section 102(2) of the Court of Appeal Rules provides that if no application for substitution is made within twelve months from the date of death of a party, the appeal shall abate.

6. By operation of law, this appeal abated when the statutory period expired. The appeal having abated by operation of Section 102(2) of the Court of Appeal Rules, there is no live appeal in which to effect substitution. The law is clear that where an appeal has abated by reason of the failure to bring a substitution application within the prescribed period, the proper remedy is to seek revival under Rule 102(3). The application therefore cannot succeed and is dismissed with no orders to cost

**Dated and delivered at Nakuru this 21<sup>st</sup> day of October, 2025**

**M.WARSAME**

.....  
**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

**Signed**  
**DEPUTY REGISTRAR**