



**Mutinda (Suing as the legal representative of the Estate of Felicia Wanjiru - Deceased) v Karani & another; Attorney General (Third party) (Civil Case 4 of 2017) [2025] KEMC 33 (KLR) (11 March 2025) (Judgment)**

Neutral citation: [2025] KEMC 33 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
CIVIL CASE 4 OF 2017  
PA NDEGE, SPM  
MARCH 11, 2025**

**BETWEEN**

**RACHAEL WANGARE MUTINDA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF FELICIA WANJIRU - DECEASED) ..... PLAINTIFF**

**AND**

**MARY WANJIRU KARANI ..... 1<sup>ST</sup> DEFENDANT**

**HASHI HAULIERS LTD ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**ATTORNEY GENERAL ..... THIRD PARTY**

**JUDGMENT**

1. The Applicants, who are the Defendants herein, brought the instant Application under Article 50 of the *Constitution*, and sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 8 rule 3 of the Civil Procedure Rules seeking the order that this Honorable Court be pleased to grant the defendants/ applicants leave to file the intended list of documents after close of pleadings and that the costs of this application be in the cause. The document they intend to file is a judgment in a sister file which they intend to rely on, on the grounds that their only witness, the 1<sup>st</sup> Defendant/ Applicant, who was the driver on the alleged date of the accident has since passed on and they have been unable to substitute the witness as none of the family members is willing to do so. That judgment was delivered in a sister file being Nakuru Civil Suit No. 1286 of 2018, Erick Charkes Mutero & Another Vrs Mary Wanjiku Karani, Hashi Hauliers Limited & The Attorney General, where the 3<sup>rd</sup> Party (Attorney General) was found to be 100% liable for the accident and the Honorable Magistrate dismissed the suit against the defendants with costs to be borne by the 3<sup>d</sup> party. That the said judgment was not available before



close of pleadings. The Application is supported by the sworn affidavit of Julia Kariuki dated 08<sup>th</sup> April, 2024.

2. The Respondent who is the plaintiff herein, opposed it through his Replying Affidavit sworn by Gladwell Kamau, dated 30<sup>th</sup> April, 2024. There was a further Supplementary Affidavit sworn on behalf of the Applicants by Julia Kariuki dated 08<sup>th</sup> July, 2024, in support of the Application.
3. The 1<sup>st</sup> Defendant/ Applicant herein is alleged to be deceased. That fact was not opposed by the Plaintiff/ Respondent. Though the Plaintiff/ Respondent has opposed the application on other grounds, I find a technical issue that goes to the competency of the application herein that this court need to deal with first before going into the merit or otherwise of the application herein. Can a dead defendant such as the 1<sup>st</sup> defendant herein file such an application in a civil court such as the present one?
4. The answer is no, a dead defendant cannot file an application in Kenya as a deceased person cannot legally participate in court proceedings; any attempt to do so would be considered a nullity and the application would be struck out by the court. Thus I do find that the application herein is a nullity insofar as it has been jointly filed by a deceased applicant.
5. The issue raised in the Application as to the death of the 1<sup>st</sup> Defendant herein is a serious one that needed to be dealt with first before any application of whatever nature can be brought on her behalf or against her. The upshot is that the Application herein sounds incompetent for having been lodged by a deceased party and is therefore untenable. It is hereby struck out with costs to the plaintiff/ respondent.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 11<sup>th</sup>, DAY OF MARCH, 2025.**

**ALOYCE-PETER-NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Plaintiff/ Respondent's Counsel: Dani h/b Kamau

Defendants'/ Applicants' Counsel: Wekesa h/b Kariuki

Plaintiff:

Third Party:

Wekesa: Praying for leave to appeal

Dani: No objection. Praying for a copy of the ruling in the CTS.

CT: Leave to appeal within 30 days granted.

Dani: Praying for a mention date

Wekesa: I do agree

CT: Mn on 26/08/2025.

