



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA**

**CIVIL APPEAL NO. 02 OF 2019**

**SUSAN KHISA.....APPELLANT**

**VERSUS**

**PETER WANYAMA KERRE ..... 1<sup>ST</sup> RESPONDENT**

**BEATRICE NAKHUMICHA LUMUNYASI .....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

This is in respect to the Respondents' Notice of Motion dated 30<sup>th</sup> April 2018 seeking the following orders:-

- 1. That this Court orders that the appeal herein has abated.**
- 2. That consequent to the grant of prayer (1) above, the costs of this application and the appeal be recovered from the Estate of the deceased Appellant.**

The application is premised on the grounds set out therein and also supported by the affidavit of **PETER WANYAMA KERRE** the 1<sup>st</sup> Respondent herein. The gravamen of the application is that the Appellant filed this appeal on 12<sup>th</sup> May 2014 having been dissatisfied by the Judgment of the Honourable Magistrate delivered on 7<sup>th</sup> May 2014 in **BUNGOMA CMCC NO. 423 OF 2002**. That the Appellant died on 30<sup>th</sup> May 2015 and has not been substituted to-date and therefore this appeal has abated.

There is no response filed to the application although **M/S OMUNDI BWONCHIRI ADVOCATES** for the Appellant were served. The application is therefore not opposed.

While no evidence has been placed before me in the nature of a Certificate of Death to confirm the averment by the Respondent that the Appellant passed away on 30<sup>th</sup> May 2015 one year after this appeal had been filed, that averment is not rebutted. The Court will therefore conclude that indeed the Appellant passed away on 30<sup>th</sup> May 2015. This appeal has therefore abated.

On the issue of costs, that is a discretionary matter. I see no reason to burden the Appellant's Estate with costs.

Ultimately therefore, I grant the Orders sought in the Respondents Notice of Motion dated 30<sup>th</sup> April 2018 but with no orders as to costs.

**Boaz N. Olao.**

**JUDGE**

**25<sup>th</sup> April 2019.**

Ruling dated, delivered and signed in Open Court this 25<sup>th</sup> day of April 2019 at Bungoma.

Mr. Murunga for Respondent - present

Appellant - absent

**Boaz N. Olao.**

**JUDGE**

**25<sup>th</sup> April 2019.**