

**IN THE COURT OF
APPEAL AT NAIROBI**

[CORAM: F. SICHALE JA: (IN CHAMBERS)]
CIVIL APPEAL (APPLICATION) NO. 101 OF
2019

BETWEEN

STEPHEN GATHUKU KINYANJUI.....APPLICANT

AND

JULIA WANJIRU GATIHURI

SAVIO NDUNGU

GATIHURI

**PAUL GATHIAKA GATIHURI (Legal Representatives of
the Estate of PETER GATIHURI KIRAGU**

(DECEASED).....RESPONDENTS

*(Being an Application for Substitution of the Deceased Respondent
pursuant to Rule 87 (1) of the Court of Appeal Rules, 2022)*

RULING.

1. **Stephen Gathuku Kinyanjui (“the applicant”)** herein has vide the motion on notice dated **24th February 2025**, brought pursuant to the provisions **Rule 44 (1) & (2), Rule 45 (a), Rule 49 (1) and Rule 87 (1) of the Court of Appeal Rules 2022**, invoked the jurisdiction of this Court sitting as a Single Judge seeking an order to substitute the

above 3 respondents

as the new respondents in the matter in place of the previous respondent; **Peter Gatihuri Karigu.**

2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant, who deposed *inter alia* that the previous respondent **Peter Gatihuri Karigu** was now deceased having died instatate on **5th June 2021**, at Gatundu.
3. He further deposed that at the time of the said Peter Gatihuri Karigu's demise, there was an ongoing dispute in the Court of Appeal in Nairobi under Civil Appeal No. 101 of 2019, in respect of his Estate namely; Ngenda/Mutomo/T. 255, pitting him against the deceased as he had bought the said land from the deceased respondent and had been occupying the same since 1974, but the deceased had refused to transfer the same to him thus precipitating the dispute.
4. That, the intended respondents herein had since obtained Letters of Administration in respect of the deceased's Estate, including the property in dispute which Letters were issued on **22nd June 2022** and confirmed on **24th February 2023**.

5. He thus urged the Court to order that the 3 respondents be substituted as the new respondents in this suit, in place of the previous respondent **Peter Gatihuri Karigu (deceased)**.
6. The motion was unopposed vide a replying affidavit sworn on **12th May 2025** by **Savio Ndung'u Gatihuri** one of the Co-Administrators of the Estate of the deceased and one of the respondents herein who deposed that they were not opposed to the motion to the extent that it seeks to substitute the name of Peter Gatihuri as the respondent with their names save to note that the 1st respondent herein (Julia Wanjiru Gatihuri) was now deceased and should therefore not be included in the proceedings.
7. Taking into totality all the circumstances of this case and in light of the fact that the motion largely remains unopposed save for the fact that one of the proposed respondent's sought to be substituted has since died, it is my considered opinion and in the interests of justice that the instant motion is for allowing.
8. Accordingly, the applicant's motion dated **24th February 2025**, is hereby allowed and an order is hereby issued

substituting **Peter Gatihuri Karigu** who is now deceased
and is yet to be

substituted with **Savio Ndung'u Gathuri** and **Paul Gathiaka Gathuri** as the new respondents in this matter with no order as to costs.

It is so ordered.

Dated and delivered at Nairobi this 7th day of November, 2025.

F. SICHALE

.....

.... JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.