

**IN THE COURT OF APPEAL
AT KISUMU**

(CORAM: ASIKE-MAKHANDIA, JA (IN CHAMBERS))

CIVIL APPEAL (APPLICATION) NO. E048 OF

2024 BETWEEN

CHRISTINE MAKOKHA IMBOGO.....APPELLANT

-VERSUS-

MECHTILDA IMBOGO.....RESPONDENT

BETWEEN

MECHTILDA IMBOGO.....APPELLANT

AND

CHRISTINE MAKOKHA IMBOGO.....RESPONDENT

(Being an application for substitution of the deceased, Appellant)

RULING

[1]The Notice of Motion dated 17th June, 2025 by **Soita Imbogo**, **“the applicant”**, seeks substitution of the appellant who is deceased by the applicant. It also has a prayer for the Appeal to be fast tracked for hearing. Under this Court’s Rules, the death of the appellant does not abate the appeal automatically. However, an application for substitution has to be made within one year after the death and in default thereof the appeal abates automatically by operation of Law unless otherwise revived by the court. The Applicant has provided letters of administration Ad-Litem in this application as evidence that he is the Administrator of

the Estate of the deceased who was his mother and the appellant herein. The application for substitution of the appellant was filed on 17th June, 2025. The appellant passed on 19th June 2024 as evidenced by the death certificate annexed to the affidavit in support of the application. The application was therefore properly made before the lapse of one year since the passing on of the appellant. As such the appeal has not abated and the applicant can legally substitute the deceased appellant.

[2] The application was duly served on all the parties, if a copy of the hearing notice on record dated 3rd November 2025, is anything to go by. I have not seen any papers filed in opposition to the application by the respondent. I therefore take it that the application is unopposed.

[3] Regarding the prayer to fast track the appeal, I revert to **Section 3(2)** of the Judicature Act which mandates the court to determine a dispute such as this according to substantial justice without undue regard to technicalities of procedure and without undue delay. Burial disputes such as this have an emotional ramification on the relatives and friends of the deceased and therefore, the need to have such disputes resolved speedily and without undue delay so that the soul of the deceased may rest in peace while the surviving relatives and friends can move on. The deceased, the subject of this appeal died

on 12th November, 2020. The appellant who was his wife has also died without knowing the fate of her appeal.

[4] In the case of Joseph Ontweka & 3 others v Ondieki [2024] KECA

11 (KLR), the court dwelt at length with the need to expedite burial disputes. In this case, parties are still litigating over a burial dispute over a person who died five years ago. In the **South African case of Xolile Shabangu-Zwane v Pitoli Shibangu & 6 others (85/2019) [2020] SZSC 67(03 March 2020)**, the court expressed concern about delayed determination of burial disputes.

[5] I would therefore entirely agree with the submissions of the learned counsel for the applicant that just like election petitions and public procurement disputes which have strict determination timelines, perhaps time is now nigh that burial disputes should join the list of disputes that should have strict timelines for determination, say, six months maximum.

[6] In the end, I allow both prayers in the application. **Mr. Soita Imbogo** will step in for the deceased appellant. I also direct the Deputy Registrar of this Court to fast track or prioritize the hearing of this appeal. Costs shall be in the appeal.

Dated and delivered at Kisumu this 17th day of November, 2025.

ASIKE-MAKHANDIA

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed
DEPUTY REGISTRAR