



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Vuyiya v Munubi (Civil Appeal (Application) 1 of 2019)  
[2025] KECA 2014 (KLR) (17 November 2025) (Ruling)**

Neutral citation: [2025] KECA 2014 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CIVIL APPEAL (APPLICATION) 1 OF 2019  
MS ASIKE-MAKHANDIA, JA  
NOVEMBER 17, 2025**

**BETWEEN**

**RUTH AYUMA VUYIYA ..... APPLICANT**

**AND**

**DORCUS INYAMBULA MUNUBI ..... RESPONDENT**

*(Being an application seeking leave to substitute the deceased appellant arising from the Judgment of the Environment and Land Court at Kakamega (Matheka, J.) dated 19th September, 2018 and the decree thereof issued on 18th November, 2018 in ELC No. 83 of 2013(OS))*

**RULING**

1. This application is seeking a multiple of prayers. However, I will only confine myself to the prayer for substitution. The other prayers for instance seeking amendments to the Memorandum of Appeal can only be handled by a full bench of this court.
2. The applicants, Franklin Munubi Vuyiya and Pamela Saisi Kioko seek to substitute Ruth Auma Vuyiya the deceased appellant in this appeal. The application is made on the grounds that the appellant had been sued in her representative capacity as the administrator of the estate of the late Peter Munubi Vuyiya, deceased. The appellant passed on 25th day of August 2019. That the Successors in title who are the applicants have obtained a grant of letters of administration issued on 4th June 2020.
3. That it's only fair that on order of substitution do issue and the administrators allowed to prosecute the appeal. The application is opposed by the respondent mainly on the grounds that there has been inordinate delay in filing and prosecuting the application. That there must be an end to litigation and the respondent should be allowed to enjoy the fruits of her judgment.



4. The Court of Appeal Rules to cater for revival of abated applications and as well as appeals. Rule 99 of the said rules is the basis upon which the application has been presented. It provides interalia:

- “(1) An appeal shall not abate on the death of the appellant or the respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased to be made a party in place of the deceased.
2. If no application is made under sub-rule (1) within twelve months from the date of death of the appellant or respondent, the appeal shall abate.
3. The person claiming to be the legal representative of deceased 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. Whether or not to grant substitution is an exercise in discretion.

This has been observed in several decisions of this court. For instance, in the case of Ashok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates [20131 eKLR, the Court stated that principles encapsulated in overriding provisions of Sections 3A and 3B of the Act: "confers on the courts considerable latitude in the exercise of its discretion in the interpretation of the law and rules made there under" and that the application of the overriding objective principle operates "to embolden the court to be guided by a broad sense of justice and fairness" and further that rules of the Court should be" construed in a manner which facilitates the just, expeditious, proportionate or affordable resolution of appeals.

6. In Issa Masudi Mwabumba vs Alice Kaven a Mutun a & 4 others [20121 eKLR, Justice Koome, JA invoked those principles when dealing with an application for revival of an appeal "made two years and eight months" after the death of a party. After setting out the principles that guide the Court in the exercise of judicial discretion, the Judge, in allowing the application for revival in that matter stated:

“Besides the principles set out in the case of Leo (supra), I am also guided by the provisions of 1. Section 3A and 3B of the *Appellate Jurisdiction Act* otherwise known as the oxygen principle. Stemming from the overarching objectives in the administration of justice the goal is at the end of day, the court attains justice and fairness in the circumstances of each case. This is the same spirit that is envisaged as the thread that kneads through *the Constitution* of Kenya, 2010 in particular Article 159. ”

7. I am satisfied that the applicants are the representatives of the deceased appellant and have moved the court with alacrity. Much as the respondent has opposed the application on the grounds already set out elsewhere in this ruling, I see no prejudice that the respondent may suffer. It is only fair that I allow the application for the Applicants to be substituted so that the appeal may be processed for hearing and disposal.

8. I accordingly allow the prayer for substitution only. 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**

