

**IN THE COURT OF  
APPEAL AT  
KISUMU**

**(CORAM: KIMARU, JA (IN CHAMBERS))**

**CIVIL APPEAL (APPLICATION) NO. E228 OF**

**2022 BETWEEN**

**PROF. WASHINGTON H.A. OLIMA.....APPLICANT**

**AND**

**JARAMOGI OGINGA ODINGA UNIVERSITY**

**OF**

**SCIENCE AND TECHNOLOGY (JOUUST).....RESPONDENT**

(Being an application for extension of time to substitute the deceased appellant out of time from the Judgment of the Employment and Labour Relations Court of Kenya at Kisumu (S. Radido, J) dated 15<sup>th</sup> June, 2022

**in**

**ELRC No. 19 of 2019)**

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**RULING**

1. **Prof. Washington H.A. Olima**, the applicant herein, died on 29<sup>th</sup> January, 2024. The applicant, **Beatrice Atieno Wando**, the deceased's widow, filed the present application on 19<sup>th</sup> December, 2025 under **Rule 102** of the **Court of Appeal Rules** seeking to be granted leave and extension of time to substitute the deceased appellant out of time. The

applicant states that she obtained a grant of letters of administration *ad litem* in

## **Nairobi High Court Succession Cause No. E420 of 2024**

that gave her legal authority to file the application on behalf of the estate of the deceased. The applicant explained that she was not able to lodge the application for substitution within the requisite twelve (12) months period after the death of the deceased due to the fact that she was taking care of her ailing mother who subsequently died within the year of death of her husband. She urged that she should be given the chance to substitute the deceased appellant and take over the proceedings in the appeal. The application is supported by the annexed affidavit of the applicant.

2. The respondent's advocates were served with the application.

They did not file any response in opposition to the application. The application is therefore unopposed.

3. **Rule 102** of the **Court of Appeal Rules** provides thus:

***“(1) An appeal shall not abate on the death of the appellant or respondent but the Court shall, on application of any interested person, cause the legal representative of the deceased person to be made a party in the place of the deceased.***

***(2) If no application is made under Sub-rule (1) within twelve months from the date of the death of the appellant or respondent, the appeal shall***

***abate.***

**(3)The person claiming to be the legal representative of a deceased party or an interested 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.”**

4. In the present application, the applicant established that the deceased appellant indeed died on 29<sup>th</sup> February 2024. A death certificate is annexed to the affidavit in support of the application. Similarly, too, she proved that she was issued with a grant of letters of administration *ad litem* that gives her legal authority to proceed with the appeal on behalf of the estate of the deceased. The only issue for determination by this Court is whether the applicant established “*sufficient cause*” for her failure to file the application for substitution within the period provided by the Rules of twelve months. The applicant explained that she was prevented from filing the application in time due to the fact that she endured three deaths and the attendant bereavement within her nuclear family within the year in question. These deaths disoriented her that she could not file the application in time.

This Court is persuaded that the

applicant was prevented from filing the application for substitution due to the tragedies that befell her family during the material period.

5. The application has merit and is hereby allowed. The appeal that abated by the operation of the law is hereby ordered revived. The applicant, **Beatrice Atieno Wando** shall substitute the deceased as the appellant in this appeal. There shall be no orders as to costs.

**Dated and delivered at Kisumu this 21<sup>st</sup> day of January, 2026.**

**L. KIMARU**

.....  
**JUDGE OF  
APPEAL**

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

***Signed***

**DEPUTY REGISTRAR.**