

**IN THE COURT OF  
APPEAL AT  
KISUMU**

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

**CIVIL APPEAL (APPLICATION) NO. 201 OF  
2023 BETWEEN**

**CHARLES  
(DECEASED)**

**OGOLA**

**THOMAS**

.....  
**APPLICANT**

**AND**

**AGRICULTURAL FINANCE**

**CORPORATION MUGANDA WASULWA**

**T/A**

**KEYSIAN  
LTD.**

**AUCTIONEERS**

**SAKOG**

**HOLDINGS**

.....  
**RESPONDENTS**

(Being an application for substitution of the deceased appellant from the Judgment and decree of the Environment and Land Court of Kenya at Migori (M. Kullow, J) dated 21<sup>st</sup> February, 2023

**in**

**ELC Appeal No. E041 of 2021)**

\*\*\*\*\*

**RULING**

1. **Charles Ogola Thomas**, the applicant herein, died on 25<sup>th</sup>

December, 2023. On 11<sup>th</sup> December, 2024, **Fredrick**

**Ochieng' Ogola**, the applicant filed the present application substantially under **Rule 102(1)** of the **Court of Appeal Rules** seeking to be allowed to substitute the deceased appellant as a party to the

appeal proceedings. The applicant states that he obtained a grant of letters of administration *ad litem* in **Migori CMCC Misc Succession Cause E098 of 2024** that granted him the legal authority to make the present application to substitute the deceased on behalf of the estate of the deceased. The limited grant was granted on 16<sup>th</sup> August, 2024. The applicant states that it would be in the interest of justice for the application for substitution to be granted so that the applicant may be able to pursue the hearing and determination of the appeal.

2. **Rule 102(1)** 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 intended 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. In the present application, the applicant established that he had obtained a limited grant of letters of administration *ad litem* that grants him legal authority to represent the estate

of the deceased in the appeal and substitute the  
deceased as the

appellant in the proceedings. The application was made within twelve months of the death of the appellant. In the circumstances therefore, the application has merit and is hereby allowed.

4. The Applicant, **Fredrick Ochieng' Ogola** shall substitute **Charles Ogola Thomas** (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.**