

**IN THE COURT OF  
APPEAL AT KISUMU**

**(CORAM: OMONDI, JA (IN**

**CHAMBERS)) CIVIL APPLICATION NO.**

**E245 OF 2021 BETWEEN**

**MOSES MANDU MAFUMBULA.....1<sup>ST</sup> APPLICANT**  
**JOSEPH MURUNGA WAFULA ..... 2<sup>ND</sup>**  
**APPLICANT FREDRICK WAMUKOTA ..... 3<sup>RD</sup>**  
**APPLICANT JUSTUS WAMALWA WAYELO 4<sup>TH</sup>**  
**PATRICK LOPONI MULEI ..... 5<sup>TH</sup>**  
**APPLICANT HERMAN BIKETI WANYONYI.....6<sup>TH</sup>**  
**APPLICANT JACOB MANYONGE OKWABUBI ..... 7<sup>TH</sup>**  
**APPLICANT BONIFAVE ODEKE PAPA.....8<sup>TH</sup>**  
**APPLICANT LAWRENCE WEKESA BWONA ..... 9<sup>TH</sup>**  
**APPLICANT CHARLES WANYONYI WAMOTO ..... 10<sup>TH</sup>**  
**APPLICANT MOSES MIRUNI ..... 11<sup>TH</sup>**  
**APPLICANT JOCTAN WEPHUKULU ..... 12<sup>TH</sup>**  
**APPLICANT FRANCIS WEKESA WAKOYA ..... 13<sup>TH</sup>**  
**APPLICANT GEORGE WALUKHU ..... 14<sup>TH</sup>**  
**APPLICANT CELESTINE WAKIMA WATI ..... 15<sup>TH</sup>**  
**APPLICANT GABRIEL MUIRURI MWANGI.....16<sup>TH</sup> APPLICANT**  
**RONALD BIKETI MASOLO.....17<sup>TH</sup> APPLICANT**  
**JASON KUNDU KIBORIT.....18<sup>TH</sup> APPLICANT**

**AND**

**THE ATTORNEY GENERAL.....RESPONDENT**

*(Being an application for substitution of the 1<sup>st</sup> appellant in an appeal against the Judgment of the High Court of Kenya at Bungoma (Riech, J.) dated 4<sup>th</sup> August 2021*

**RULING**

1. Moses Mandu Mafumbula, the first appellant in Civil Appeal No. E245 of 2021 had contested the outcome of Bungoma High Court Petition No.15 of 2014 (consolidated with 17/2014,

18/2014, 20/2014, 21/2014, 22/2014, 23/2014, 24/2014, 25/2014, 26/2014, 27/2014, 28/2014, 29/2014, 30/2014, 9/2016, 10/2016, 11/2016 & 12/2016) dated 4<sup>th</sup> August, 2021 (*Riechi, J.*), and along with the other appellants, lodged this appeal. However, he died on 3<sup>rd</sup> August, 2024 as confirmed by a copy of the death certificate which is annexed. No substitution of the deceased appellant was made in the matter, consequently the one year statutory period within which to substitute a deceased party lapsed and the suit has abated.

2. The administrators of his estate, namely Ridah Nasike Siraël and Sarah Mutiembu, being the wife and daughter respectively, are desirous of proceeding with the suit, and seek that the name of Moses Mandu Mafumbula (deceased be substituted with the name of Ridah Nasike Siraël and Sarah Mutiembu as the 1<sup>st</sup> appellant. They have thus filed the Notice of Motion dated 25<sup>th</sup> June 2025 and supported by the affidavit sworn by both applicants. In support of their application, the applicants rely on the copy of a grant of letters of administration of the said estate that was issued to them. The applicants are apprehensive that the other consolidated

appeals will be delayed as all the appeals should be heard together.

3. Although the applicant is very minimal with information as regards the consolidated suits, the information captioned in the application discloses that the abated suit relates to an appeal from the award of damages and Order of the High Court at Bungoma (*S. N. Riechi, J.*) in Petition No.15/2014 (consolidated with 17/2014, 18/2014, 20/2014, 21/2014, 22/2014, 23/2014, 24/2014, 25/2014, 26/2014, 27/2014, 28/2014, 29/2014, 30/2014, 9/2016, 10/2016, 11/2016 & 12/2016 dated 4<sup>th</sup> August, 2021.
4. There is no response by the respondent either by way of a replying affidavit or written submissions
5. They have annexed a copy of the memorandum of appeal which contests the awarded sum as inordinately low amount that has failed to take into account the serious nature of the case, and the suffering of the appellants.

**Rule 102 (1)** of the Court of Appeal Rules provides that:

- (1) An appeal shall not abate on the death of the appellant or respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased person 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 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.

Against this background, the applicants admit that time lapsed and the appeal as relates to the 1<sup>st</sup> appellant abated.

I draw from the decision in **CKM vs. ENM & Another** (Civil Appeal 250 of 2019) [2024] KECA 293 (KLR)

held thus:

***"It is basic that the rules of natural justice and fair play would require that where a party to a suit dies and the cause of action survives him, his estate has to be heard through the estate's legal representative before a decision can be rendered. In any case, any decision made against such an estate can only be satisfied by the legal representative"***

6. In **Njoroge & Another vs. Kamau (Deceased) & Another** (Civil Appeal (Application) E051 of 2019) [2024] KECA 806 (KLR) this Court held as follows:

***"In holding that the delay herein is not inordinate, I observe that the Court in Issa***

**Masudi Mwabumba vs. Alice Kavenya Mutunga & 4 Others [2012] eKLR revived an appeal which had abated for 2 years and 8 months. Similarly, in Elizabeth Wanjiru Njenga & Another [supra], the Court, sitting on a reference, revived an appeal that had abated for a period of 1**

***year 7 months. I am also aware that the applicants have invoked the provisions of sections 3A and 3B of the Appellate Jurisdiction Act which requires that courts to be guided by the interests of justice and fairness in order to facilitate a just, expeditious and proportionate resolution of appeals"***

7. In the present instance, the suit abated in August 2025, but before that date, the applicants swiftly moved the court in June seeking substitution, so that there really was no delay in making the application. I need not belabour the matter; the applicants have demonstrated their legal status in relation to the estate of the deceased. Consequently, the application be and is hereby allowed. The late Moses Mandu Mafumbula shall be substituted with Ridah Nasike Siraël as the 1<sup>st</sup> appellant. The costs shall be in the cause.

**Dated and delivered at Kisumu this 30<sup>th</sup> day of January, 2026.**

**H. A. OMONDI**

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

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

**Signed**

**DEPUTY REGISTRAR**