

**IN THE COURT OF  
APPEAL AT  
NAIROBI**

**(CORAM: NJUGUNA, J.A. - IN CHAMBERS)**

**CIVIL APPEAL (APPLICATION) NO. E359 OF  
2023**

**BETWEEN**

**FREDRICK OLONANA TOME.....1<sup>ST</sup> APPELLANT**

**MRS. GERISHON OLE TOME.....2<sup>ND</sup> APPELLANT**

**AND**

**SHADRACK OLTETIA OLE TOME.....1<sup>ST</sup> RESPONDENT**

**TABITHA MATEYIAN TOME.....2<sup>ND</sup> RESPONDENT**

*(Being an application for substitution of the deceased 2<sup>nd</sup> Appellant in an appeal arising from the judgment and decree of the High Court of Kenya (Ougo, J.) dated 9<sup>th</sup> June 2015)*

*in*

***HCCC No. 457 of 2006)***

**\*\*\*\*\***

**R U L I N G**

1. In the notice of motion dated 6<sup>th</sup> November 2025, the applicant, **Harun Sankale Tome**, seeks to be substituted as the 2<sup>nd</sup> appellant in place of **Mrs. Gerishon Ole Tome**, who died on 23<sup>rd</sup> May 2025.
2. He avers that Mrs. Gerishon Ole Tome, who is named as the 2<sup>nd</sup> appellant, died on the 23<sup>rd</sup> May 2025 and has not been substituted to date. The applicant has obtained Letters of Administration Ad Litem of the Estate of the deceased

(Gerishon Tome) for purposes of prosecuting the appeal herein.

3. The 1<sup>st</sup> respondent, in opposing the application, filed a replying affidavit sworn on the 12<sup>th</sup> day of November 2025. He avers that the application is an abuse of the Court process as it was presented six months after the death of the 2<sup>nd</sup> appellant and during the pendency of the appeal herein.
4. The 1<sup>st</sup> respondent contends that the application has been filed not only as a procedural step, but as a tactical move to derail the main application before this Court, dated the 1<sup>st</sup> October 2025, seeking dismissal of the appeal for want of prosecution.
5. He laments that he will suffer extreme prejudice as his application dated 1<sup>st</sup> October 2025, had been certified as extremely urgent, directions issued and complied with, on the basis of his delicate health.
6. The Court has considered the material before it and the submissions filed by the applicant.
7. Under **rule 102 (2)** of the **Court of Appeal Rules**, unless an application for substitution of a deceased party to an appeal is brought within 12 months from the date of the death of the party, the appeal shall abate. In this appeal, the appellant died on 23<sup>rd</sup> May 2025, and the instant application was lodged on the 7<sup>th</sup> November 2025, a period of six months. This was within the prescribed 12 months and **rule 102 (1)** of the **Court of Appeal Rules** provides as follows:

**“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.”**

8. Overall, the delay is not excessive, and the same has been explained in that the Estate had not agreed on the administrators. The prejudice alluded to, by the respondent, of the delay in having the matter finalized cannot outweigh the right to be heard under **Article 50** of the **Constitution**.
9. Ultimately, the Court allows the application. Costs shall abide the outcome of the appeal.
10. It is so ordered.

**Dated and delivered at Nairobi this 6<sup>th</sup> day of March 2026.**

**L. NJUGUNA**

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

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

*Signed*

**DEPUTY REGISTRAR**