

**IN THE COURT OF
APPEAL AT
NAIROBI**

(CORAM: L.M. NDOLO, JA (IN CHAMBERS))

**CIVIL APPEAL (APPLICATION) NO E607 OF
2024**

**JENNIFER MUTHONI NGATU AND
PETER MBATIA GICHERU (Administrators of the
Estate of Gicheru Mbatia) (Deceased).....APPELLANTS**

AND

JOSEPH KIBIRU MBATIA.....1ST RESPONDENT

JAMES KIMANI KURIA.....2ND RESPONDENT

AND

ALICE WANJIKU MWAURA.....APPLICANT

*(Being an application for substitution of Joseph Kiburu Mbatia
(Deceased) with his legal representative Alice Wanjiku Mwaura)*

RULING

1. This ruling determines the notice of motion dated 19th February 2025, brought by Alice Wanjiku Mwaura, in her capacity as the legal representative of the 1st respondent, Joseph Kiburu Mbatia (deceased). By her application, the applicant seeks to substitute the 1st respondent in these proceedings.
2. The application is supported by the applicant's own affidavit and is premised on the grounds that; the 1st respondent died

on 20th April 2024 but the subject matter of the proceedings being; Title Number Dagoretti/Waithaka/508 survived him and that

the applicant is the legal representative of the estate of the deceased, vide Milimani HCFP&A No. E522 of 2024.

3. The motion is opposed by one of the appellants, Peter Mbatia Gicheru, by his replying affidavit sworn on 27th October 2025. He terms the applicant as a complete stranger in these proceedings, with no nexus, interest or beneficial claim in respect of the Estate of Gicheru Mbatia (deceased) or in the subject matter of this court appeal.
4. Peter Mbatia Gicheru depones that **rule 102** of the Court of Appeal Rules, provides that substitution of a deceased party may only be effected by a person who is the legal representative of the deceased as recognised under **section 2** of the Civil Procedure Act; being one who holds a valid and subsisting grant of representation under the Law of Succession Act.
5. He points out that the applicant was issued with a limited grant of letters of administration *ad litem* in Milimani HCFP&A No. E522 of 2024: In the Estate of Mbatia Joseph Kibiru. He adds that the grant was restricted to defending the suit then pending before the High Court and was limited in duration to ninety (90) days, from the date of issuance, which period had since lapsed and the applicant had neither applied nor obtained a full grant of letters of administration intestate.
6. Peter Mbatia Gicheru asserts that the applicant lacks the

requisite *locus standi* to institute, maintain or be substituted in the present appeal proceedings.

7. The application is brought under **rule 102(1)** of the Court of Appeal Rules which 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.

8. The appellants' opposition to the application is based on the assertion that the grant of letters of administration issued to the applicant was limited to defending the suit at the High Court and further that the limited grant was to lapse after 90 days.

9. I have had occasion to peruse the terms of the limited grant of letters of administration issued to the applicant on 10th July 2024, and the orders therein bear reproduction:

a) THAT the application is allowed, limited letters of administration granted to the applicant to defend the suit only.

b) THAT the applicant should apply for full grant within 90 days from the date herein.

10. To my mind, the suit referred to in order (a) above would include an appeal or other proceedings, which may be construed as an offshoot of the matter before the High Court.

11. Secondly, the 90 days contained in order (b) was the period within which the applicant was directed to apply for a full grant

of letters of administration. There is nothing in that order to suggest that the limited grant would lapse after 90 days.

12. That said, the appellants' assertion that the applicant is a stranger in these proceedings is without basis and is rejected.
13. The application is consequently allowed and the 1st respondent, Joseph Kibiru Mbatia (deceased) is substituted with the applicant, Alice Wanjiku Mwaura.
14. The costs of the application will be in the appeal.

Dated and delivered at Nairobi this 6th day of March, 2026.

L.M. NDOLO

.....
JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR