

**IN THE COURT OF  
APPEAL AT KISUMU**

**(CORAM OMONDI, JA (IN  
CHAMBERS))**

**CIVIL APPLICATION NO. 169 OF  
2020 BETWEEN**

**MOHAMMED JUMA PONDA (CITOR).....APPLICANT**

**AND**

**WATENYA WA MURAMBI  
RAMADHAN(DECEASED)**

.....  
**RESPONDENT**

*(Being an application for substitution of the legal representation  
from the Judgment of the High Court of Bungoma (Olaa, J.)*

**in**

**Cause No. E007 of 2025)**

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**\*\*\* RULING**

1. By an application dated 11<sup>th</sup> July 2025, Mohammed Juma Ponda had sought to substitute the deceased respondent, Ramadhan Watanya, with Suela Naliaka Murambi, the duly appointed legal representative, pursuant to the Limited Grant of Letters of Administration Ad Litem issued on 21st May 2025 in Bungoma High Court Succession Misc. Cause No. E007 of 2025. The respondent who was party in the trial court, died on 19<sup>th</sup> March 2024 and the legal representative, Suela Naliaka Murambi, has obtained Limited Grant of Letters of Administration Ad Litem specifically for the prosecution of this appeal. The applicant explained that the substitution is

necessary to preserve and sustain the appeal and prevent its abatement.

2. There was no response to the application.
3. Subsequently the applicant filed written submissions dated 3<sup>rd</sup> October 2025, through learned counsel Mr. Donald Bulimo, in which he seeks leave to withdraw the Notice of Motion dated 18<sup>th</sup> July, 2025, and addresses this court on extension of time and, revival of the appeal which abated upon the death of the respondent. It is his submission that the application for substitution is premature, yet in his submissions he argues that substitution of the deceased respondent with his duly appointed legal representative, Suela Naliaka Murambi, holder of a Limited Grant of Letters of Administration Ad Litem issued on 21<sup>st</sup> May, 2025 in Bungoma H.C. Succession Cause No. E007 of 2025 is necessary so as to be able to prosecute the appeal.
4. The applicant acknowledges that the Motion dated 18<sup>th</sup> July 2025, which sought substitution, was premature as no revival of the abated suit had been sought before substitution; and that in the circumstances, the proper course is to withdraw it. Drawing from Rule 42 of the Court of Appeal Rules and Section 3A of the Civil Procedure Act, the applicant submits that this Court has inherent jurisdiction to grant such leave in the interest of justice that the respondent died on 19<sup>th</sup> March 2024, causing the appeal to abate by operation of rule 99(3)

of the Court of Appeal Rules.

5. It would appear to me that either counsel prepared another application in which he had sought to revive the abated suit, but failed to file the application; or he is mixing up issues. If he withdraws the application dated 18<sup>th</sup> July 2025, which only has a prayer for substitution, then on what basis would this court be acting to issue orders for substitution. As regards extension of time and revival of the suit, there is no formal Notice of Motion in that regard, and the applicant cannot make such an application in his submissions and get away with it. Rules of procedure are the handmaiden of practice.
6. Consequently, the only way to salvage the situation is to deem that on application by counsel for the applicant, the Notice of Motion dated 18<sup>th</sup> July 2025, be and is hereby marked as withdrawn with no orders on costs.

**Dated and delivered at Kisumu this 13<sup>th</sup> day of March, 2026.**

**H. A. OMONDI**

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

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

***Signed***

**DEPUTY REGISTRAR**