

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KAKAMEGA
ELC CASE NO. E002 OF 2024

CHRISTINE MAKOKHA IMBOGO.....
.....PLAINTIFF

VERSUS

CHIVEU SHAMALA IMBOGO.....1ST
DEFENDANT

BENJAMIN IMBOGO SHAMALA.....2ND
DEFENDANT

GEORGE OKWEMBA SHAMALA.....3RD
DEFENDANT

AND

SOITA IMBOGO.....APPLICANT

RULING

Introduction

1. Before court is a Notice of motion dated 20th February 2025 filed by the plaintiff seeking orders that;

a) Spent

b) That this Honourable court be pleased to issue an order for substitution of the deceased person one CHRISTINE MAKOKHA IMBOGO

with SOITA IMBOGO who is now the applicant in this application.

c) Costs in the cause.

2. The application is supported by the affidavit sworn by the applicant on 17th February 2025. The applicants case is that Christine Makokha Imbogo the plaintiff herein died in 2024. That the deceased was the applicant's mother. That the applicant intends to prosecute this matter and seeks to substitute the deceased plaintiff.
3. The application was opposed. Chibeu Shamala Imbogo filed replying affidavit dated 15th July 2025. He stated that the application should not be allowed as there is no basis upon which the application can be allowed as it raises no cause of action. That the applicant is not a representative of the estate of the deceased plaintiff.
4. In a rejoinder, the applicant filed supplementary affidavit dated 12th November 2025. He stated that Christine Imbogo died on 19th June 2024 and that he took out grant of letters of administration for her estate. That he inadvertently failed to include the grant in his application. He attached copies of death certificate and grant of representation.

5. Parties filed submissions which the court has duly considered

Analysis and determination

6. The court has carefully considered the application, response thereto and submissions. The only issue that arise for determination is whether the applicant deserves the orders sought.

7. Where a cause of action survives the death of a party, the court has power to grant orders for substitution of such deceased party whether it is a plaintiff or defendant; by granting orders to join the personal representative of the party's estate. Order 24 Rules 1 to 4 provide as follows;

Abatement by party's death if right survives [Order 24, rule 1]

1. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues.

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives [Order 24, rule 2]

Where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff [Order 24, rule 3]

- (1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative**

of the deceased plaintiff to be made a party and shall proceed with the suit.

- (2) Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:**

Provided the court may, for good reason on application, extend the time.

4. Procedure in case of death of one of several defendants or of sole defendant [Order 24, rule 4]

- (1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of**

action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.

8. In the instant case, the late CHRISTINE IMBOGO filed this suit in 2018. She passed away in 2024 before this suit was heard and determined. The applicant has produced both the death certificate and grant of representation and therefore this court is convinced that the cause of action survives the deceased and that the applicant deserves the orders sought.

9. In the premises, the application dated 20th February 2025 is merited and the same is hereby allowed. The deceased

plaintiff Christine Makokha Imbogo is hereby substituted with the applicant herein Soita Imbogo. I make no order as to costs.

10. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA
IN OPEN COURT/VIRTUALLY THROUGH
MICROSOFT TEAMS VIDEO CONFERENCING
PLATFORM THIS 4TH DAY OF MARCH 2026**

**A. NYUKURI
JUDGE**

In the presence of

Mr. Masinde for the applicant

Ms Imainata holding brief for Mr. Nyamu for the respondents

Court Assistant: Delphine