



REPUBLIC OF KENYA



KENYA LAW
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**Oduor v Okech (Civil Appeal (Application) E165 of 2025)
[2026] KECA 833 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KECA 833 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL (APPLICATION) E165 OF 2025
HA OMONDI, JA
APRIL 28, 2026**

BETWEEN

DAVID OTIENO ODUOR APPLICANT

AND

CARENA ATIENO OKECH RESPONDENT

(Application seeking leave to file appeal from a Ruling and Order of the High Court of Kenya at Siaya (Kemei, J) dated 21st February 2025 in Cause No. E01 of 2021)

RULING

1. By an application dated 14th January, 2026, supported by the affidavit of David Otieno Oduor, the applicant seeks orders that Mercyleen Adhiambo Ogotu be substituted for the deceased Carena Atieno Okech (Carena), who was the personal representative for the estate of Joseph Oketch Adede, as the respondent in the succession cause. According to the annexed death certificate, the death of Carena occurred on 1st November, 2024
2. The genesis of this is that the applicant was appointed the administrator of the estate of Joseph Oketch Adede (Deceased) in his capacity as the biological grandson of the said deceased Adede; and he proceeded to administer his grandfather's estate to completion. According to the applicant, he distributed the estate as per the Certificate of Confirmation issued to him; and the estate was finally registered jointly in his name and of his brother and mother.
3. Later, by a Chamber Summons dated 5th September 2023, Carena Atieno Oketch, the respondent challenged the grant issued to the applicant and sought for its revocation. The applicant had filed in the High Court, a notice of appeal and a record of appeal on 27th February, 2025, having been dissatisfied with the ruling and order thereof. Upon delivery of the decision, the applicant was aggrieved, and preferred an appeal before this Court. However, the respondent herein was already deceased, and despite the learned judge being informed by the applicant's counsel about the circumstances, instead



of allowing her substitution, the court proceeded to deliver its decision and order on the basis that there was no evidence yet the respondent was already deceased.

4. The applicant states that as a consequence of that decision, despite the death of the respondent, it meant that he still had to go ahead to file the Notice of Appeal and Record of Appeal within the statutory timelines set under the rules of this Court; at the time of instituting the appeal, a new personal representative of the Deceased's estate against whom the appeal could be lodged had not been appointed; and the appointment only happened on 14th October 2025 after he had filed Summons for Revocation of Grant on 20th May 2025, and was issued with a new Grant. The result was that the applicant, in compliance with the statutory timelines filed a Notice and Record of Appeal as he awaited the appointment of a personal representative of the of the estate of Joseph Akech Adede.
5. The applicant thus seeks that Mercyleen Adhiambo Ogutu be substituted for the deceased respondent/ administrator Carena Atieno Okech pursuant to rule 87 of the Court of Appeal Rules 2022, pointing out that neither the respondent nor any other interested party will suffer any prejudice if the orders sought are granted; and there has not been any inordinate delay in bringing this application.
6. No response has been filed by the respondent herein, either by way of a replying affidavit or written submissions. The only reasonable inference to draw is that there is no objection to the application.
7. The written submissions filed by the applicant basically reiterate what he has stated in the application and the supporting affidavit. 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”

8. In Njoroge & another vs. Kamau (Deceased) & another (Civil Appeal (Application) E051 of 2019) [2024] KECA 806 (KLR) this Court held inter alia 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”

9. The applicant realizing the dilemma he was in, swiftly moved to court to file the appeal within the statutorily required time, even as he awaited appointment of the replacement legal representative. The new grant was issued in October 2025, and within 3 months, i.e. January 2026, he had filed the application. I need not belabour the matter; the applicants have demonstrated the legal status in relation to the estate of the deceased. Consequently, the application be and is hereby allowed. The late Carena Atieno Okech shall be substituted with Mercyleen Adhiambo Ogutu as the respondent. The costs shall be in the cause.

DATED AND DELIVERED AT KISUMU THIS 28TH DAY OF APRIL, 2026.

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JUDGE OF APPEAL

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

Signed



DEPUTY REGISTRAR

