

**IN THE COURT OF APPEAL
AT MOMBASA**

(CORAM: TUIYOTT, JA (IN CHAMBERS))

CIVIL APPEAL (APPLICATION) NO. E076 OF 2023

BETWEEN

MARSHA BIRYA DENA.....APPLICANT

AND

FRED KARL SCHUMACHER.....1ST RESPONDENT
HANS KOSCHANY 2ND
RESPONDENT DOPP INVESTMENTS LTD.....3RD
RESPONDENT

*(Being an application for substitution of the appellant (Deceased)
and leave to revive the appeal*

in

Civil Appeal No. E076 of 2023)

RULING

- [1] The notice of motion dated 13th March 2026 is for “striking out the appellant” herein and in his place be substituted **Beatrice Kadzo Chengo** (Beatrice).
- [2] The motion is supported by the affidavit of Beatrice sworn on 13th March 2026. She annexes to it a copy of the death certificate of **Masha Birya Dena** (the deceased appellant) and a copy of a limited grant of letters of administration *ad-litem* granted to her on 29th November 2023 in respect to the deceased appellant. It is limited to

the purpose of instituting and/or prosecuting, and/or defending suit with no power of distribution.

[3] The motion is not opposed despite service of the motion and hearing notice to counsel for the respondents.

[4] Although the suit would have abated under the provisions of Rule 102 of the Court of Appeal Rules 2022, the applicant has in the grounds on the face of the motion sought its revival, and whilst this should have been a substantive prayer, I disregard the inelegance of the motion and in the interest of substantive justice do hereby allow the revival of the appeal and the notice of motion dated 13th March 2026 as prayed. No order as to costs.

Dated and delivered at Mombasa this 8th day of May, 2026.

F. TUIYOTT

.....
JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR