



**Saikwa & 2 others v Vomorono Limited & 4 others (Civil Appeal (Application) 411 of 2019) [2025] KECA 93 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KECA 93 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL (APPLICATION) 411 OF 2019  
LA ACHODE, JA  
JANUARY 24, 2025**

**BETWEEN**

**RACHAEL CHEPKEMOI SAIKWA ..... 1<sup>ST</sup> INTENDED APPELLANT**

**ANDREW RAYMOND KWEMOI SAIKWA ..... 2<sup>ND</sup> INTENDED APPELLANT**

**AND**

**MOSES KIPLANGAT SAIKWA (DECEASED) ..... APPELLANT**

**AND**

**VOMORONO LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**JOHN MTAY SAIKWA ..... 2<sup>ND</sup> RESPONDENT**

**ESTHER CHEPKEMOI SAIKWA ..... 3<sup>RD</sup> RESPONDENT**

**AMOS POTENDO SAIKWA ..... 4<sup>TH</sup> RESPONDENT**

**DORCAS MWALILA MUNABI ..... 5<sup>TH</sup> RESPONDENT**

*(Being an appeal from the Judgment and Order of the High Court at Nairobi (Muigai J) delivered on 5th June 2018 in HC Succ Cause No. 599 of 1986)*

**RULING**

1. By a Notice of Motion dated 26<sup>th</sup> September 2024, Rachel Chepkemoi Saikwa and Andrew Raymond Kwemoi Saikwa, being the legal representatives of the appellant, Moses Kiplangat Saikwa (deceased), seek to be made party to the appeal in place of the deceased appellant.
2. The application is supported by an affidavit dated 26<sup>th</sup> September 2024, sworn by Rachel Kwemoi Saikwa and Andrew Kwemoi Saikwa respectively.



3. The deponents aver that they are the children of Moses Kiplangat Saikwa (deceased appellant). That the appellant passed away on 17<sup>th</sup> February, 2024, hence the necessity to file the application for substitution. That they obtained a Limited Grant ad Litem and are the legal representatives of his estate and it is in the interest of justice that this application be granted to allow the appeal to proceed without delay.
4. The intended appellants filed submissions dated 7<sup>th</sup> October, 2024 through M/s Burton Isindu and Co. Advocates. Counsel submitted that the respondents have not filed any reply to the application and that the application and supporting affidavit sworn by administrators/Executors are self-explanatory. Counsel filed further submissions and stated that the substitution is necessary pursuant to rule 99 of the Court of Appeal Rules (year not indicated).
5. The 1<sup>st</sup> respondent did file written submissions dated 12th November 2024, in response and set out 3 issues for determination, to wit:
  - “i. Whether the joinder, of parties, Rachel Chepkemai Saikwa and Andrew Raymond Kwemai Saikwa would be procedural being grandchildren in the Estate & valid as appellant to qualify to prove (sic) their beneficial interest.
  - ii. If the beneficial interest has been lost or abated the appellant whom (sic) was the one seeking to prove his beneficial interest is Deceased
  - iii. Whether the appeal by the Appellant (Deceased), has abated & that the only Appeal to be heard by the court is the Cross-Appeal.”
6. On the first issue, the respondent urges that there is no full grant as required under rule 53 of the Court of Appeal Rules 2022. That the applicants who are grandchildren are not supposed to administer the estate of the grandparent.
7. On the second issue, it is urged that the substratum of the appeal has been lost, since the deceased (appellant) failed to prove his beneficial interest in the estate in the Superior Court.
8. On the third issue, it is argued that the substance of the appeal has been extinguished, as the beneficial interest was lost when the suit property was transferred to a third party and is protected by the court’s decisions of 5<sup>th</sup> June, 2018 and 11<sup>th</sup> October, 2018. In short, that the application lacks merit and should be dismissed.
9. I note however, that the issues raised above by the respondent belong in the appeal itself and do not add value to this application. I will therefore not belabor them.
10. The application does not indicate the rule under which the jurisdiction of this Court is invoked. However, the prayers sought place it under Rule 102 (1) and (3) of the Court of Appeal Rules 2022 which provide 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 representation of the deceased person to be made a party in place of the deceased.
  - (3) The person claiming to be the legal representative of a deceased party or an interested party to an appeal may apply for an order to revive an appeal which has abated and, if it is proved that the legal representative was prevented by



sufficient cause from continuing the appeal, the court shall revive the appeal upon such terms as to costs or otherwise as it deems fit.”

11. Under rule 102 (1) and (3) of the *Court of Appeal Rules* 2022, therefore, any person claiming to be the legal representative of a deceased party, or an interested party in an appeal may apply for a deceased party to the appeal to be substituted with their legal representative.
12. Upon considering the pleadings and the submissions herein, I am satisfied that the delay in filing this application is not inordinate in the circumstances, and there is no evidence of any prejudice to be suffered by the respondents if the application is allowed.
13. Consequently, I find that the applicants who are the legal representatives of the deceased appellant have met the threshold for granting the orders sought. Therefore, the application dated 26<sup>th</sup> September 2024, is allowed with the following orders:
  - i. Moses Kiplangat Saikwa (deceased appellant), be and is hereby substituted in Civil Appeal No. 411 of 2019 by the applicants; Rachel Chepkemai Saikwa and Andrew Raymond Kwemai Saikwa, the legal representatives of the estate of the deceased.
  - ii. The applicants shall within fourteen (14) days from the date of delivery of this ruling, file an Amended Record of Appeal, reflecting the substituted parties in accordance with this ruling.
  - iii. Thereafter the appeal shall be fixed for hearing on a date to be taken in the registry.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JANUARY, 2025.**

**L. ACHODE**

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**. JUDGE OF APPEAL**

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

*signed*

**DEPUTY REGISTRAR.**

