



Guya v Orinda (Suing as the Administrator of the Estate of Raphael Midhodho - Deceased) & 3 others; Odongo (Applicant) ((Legal Representative of the Estate of William Odongo Guya - Deceased)) (Civil Appeal (Application) E234 of 2023) [2025] KECA 462 (KLR) (7 March 2025) (Ruling)

Neutral citation: [2025] KECA 462 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL (APPLICATION) E234 OF 2023**

**WK KORIR, JA
MARCH 7, 2025**

BETWEEN

WILLIAM ODONGO GUYA APPELLANT

AND

AUSTIN OKOTH ORINDA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF RAPHAEL MIDHODHO - DECEASED) 1ST RESPONDENT

REPUBLIC 2ND RESPONDENT

MINISTER FOR LANDS & SETTLEMENT OFFICER BONDO SUB-COUNTY 3RD RESPONDENT

BONDO SUB-COUNTY LAND REGISTRAR 4TH RESPONDENT

AND

JUDITH ATIENO ODONGO (LEGAL REPRESENTATIVE OF THE ESTATE OF WILLIAM ODONGO GUYA - DECEASED) APPLICANT

(LEGAL REPRESENTATIVE OF THE ESTATE OF WILLIAM ODONGO GUYA - DECEASED)

(Being an application for substitution of the Appellant in Kisumu Court of Appeal Civil Appeal No. E234 of 2023 in Civil Appeal No. E234 of 2023)

RULING

1. In a notice of motion dated 1st October 2024 brought under rule 102 (1) of the Court of Appeal Rules, 2022, the applicant, Judith Atieno Odongo moved the Court seeking to be substituted in place of the



deceased appellant, William Odongo Guya. The application is supported by an affidavit sworn by the applicant on the date of the application. In a nutshell, the applicant avers that the appellant died on 5th February 2024, and the applicant, being the wife, has since secured a grant of letters of administration ad litem issued on 29th May 2024 by the Principal Magistrate’s Court at Bondo Law Courts. She avers that it is in the interest of justice that the application be allowed to avert the abatement of the appeal.

2. As of 6th February 2025, when this application came up for hearing, the respondents had not lodged a response or submissions. The applicant also did not file any submissions in support of her application.
3. Under rule 102 (2) of the Court of Appeal Rules, unless an application for substitution of a deceased party to an appeal is brought within 12 months from the date of the death of the party, the appeal shall abate. In this appeal, the appellant died on 5th February 2024, and the instant application was lodged in the Court’s registry on 1st October 2024. This was within the prescribed 12 months and rule 102 (1) of the Court of Appeal Rules provides as follows:

“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 representative of the deceased person to be made a party in place of the deceased.”

4. The import of the foregoing provision is that an application for substitution by a legal representative that has been brought within 12 months from the date of the demise of a party to an appeal ought to be allowed. The annexures by the applicant clearly show that the appellant died and the applicant has obtained a grant of administration ad litem. Consequently, the notice of motion dated 1st October 2024 is allowed so that the deceased appellant, William Odongo Guya, is substituted by Judith Atieno Odongo, the applicant herein. The respondents, having not participated in the application, there shall be no order as to the costs of the application.

DATED AND DELIVERED AT KISUMU THIS 7TH DAY OF MARCH 2025.

W. KORIR

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

