



REPUBLIC OF KENYA



KENYA LAW
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**Private Development Co. Limited & another v Ngonyo & 3 others (Civil Appeal
(Application) 49 of 2019) [2025] KECA 461 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KECA 461 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) 49 OF 2019**

JM MATIVO, JA

MARCH 6, 2025

BETWEEN

PRIVATE DEVELOPMENT CO. LIMITED 1ST APPLICANT

LUCY MWIHIKI MACHARIA 2ND APPLICANT

AND

REBECCA NGONYO 1ST RESPONDENT

JACKSON GICHARU GICHOHI 2ND RESPONDENT

SAMUEL KAMAU MACHARIA 3RD RESPONDENT

JACKSON NJENGA NJOROGE 4TH RESPONDENT

*(Being an application from the judgment of the Environment and Land Court
of Kenya at Nakuru (M. Sila, J.) dated 15th February 2019 in ELC 433 of 2019)*

RULING

1. Vide an application dated 24th February 2022, brought under Section 3A and 3B of the *Appellate Jurisdiction Act*, Section 3A. of the *Civil Procedure Act*, Rules 1 (2) and 4 of the *Court of Appeal Rules* 2022, Order 50 Rule 5 of the *Civil Procedure Rules*, Article 159 (b) of *the Constitution* and all other enabling provisions of the law, the applicants pray for leave and extension of time to substitute Jackson Njenga Njoroge- deceased, (the 3rd respondent) with Solomon Njenga alias Solomon Githendui Njenga in Court of Appeal Civil Appeal No. 49 of 2019. The motion is supported by grounds on its body and a supporting affidavit sworn on 24th February 2022 by Lucy Mwihiaki, the 2nd appellant.
2. In opposing the application, the 2nd respondent filed grounds of opposition dated 27th February 2025 stating that: (a) no valid reason for the extension of time; (b) the applicants have invoked provisions of the law which are alien to this Court; and, (c) the application lacks merit.



3. The 3rd respondent opposed the application vide the replying affidavit sworn on 29th September 2022 by Solomon Githendui Njenga and the further affidavit sworn on 4th March 2025 by Julius Orengo advocate on record for the 3rd respondent.
4. The application was disposed of by way of written submissions. For the applicants, the firm of Bizimana Associate Advocates filed submissions dated 20th October 2022 while the 3rd respondent's submissions are dated 29th September 2022.
5. I have considered the grounds in support of the application, the affidavits opposing the application, the grounds of opposition and the submissions by the respective advocates for the parties. Learned counsel for the 3rd respondent Mr. Julius Orengo swore a further affidavit dated 4th March 2025 in which he avers that Solomon Njenga alias Solomon Githendui Njenga, the same person the applicants intend to substitute in place of the 3rd respondent is also deceased. Annexed to this further affidavit is as at 3rd March 2024, a copy of the burial permit to that effect. It shows that he died on 3rd March 2024. This information has not been controverted. That being the position, the inevitable conclusion I arrive at is that, the instant application has been rendered otiose and/or an academic exercise by the demise of Solomon Githendui Njenga, the person sought to be enjoined. No court of law can willingly issue an order in vain. Courts loathe determining moot questions or issues which do not present a live controversy or hypothetical questions. Accordingly, the applicants' application dated 24th February 2022 is hereby struck out. There shall be no orders as to costs.

DATED AND DELIVERED AT NAKURU THIS 6TH DAY OF MARCH, 2025.

J. MATIVO

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JUDGE OF APPEAL

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

Signed.

DEPUTY REGISTRAR.

