



Ndung'u (Suing on behalf of the Estate of John Ndung'u Njau) v Mbuki (Civil Appeal (Application) E201 of 2023) [2025] KECA 972 (KLR) (23 May 2025) (Ruling)

Neutral citation: [2025] KECA 972 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E201 OF 2023**

LA ACHODE, JA

MAY 23, 2025

BETWEEN

ANTHONY KIMONDO NDUNG'U (SUING ON BEHALF OF THE ESTATE OF JOHN NDUNG'U NJAU) APPELLANT

AND

MARGARET MAGIRI MBUKI RESPONDENT

(Being an application for substitution of the appellant in the appeal against the Judgment in the Environment and Land Court at Nairobi (Komingoi J) dated 30th September, 2022 in ELC Suit No. 1608 of 2007)

RULING

1. In this Notice of Motion dated 18th December 2024, the Applicant Anthony Kimondo Ndung'u, the administrator of the estate of the deceased, seeks to be substituted in place of the appellant John Ndung'u Njau, (deceased) in this appeal. The application is brought pursuant to section 1A and 1B of the *Appellate Jurisdiction Act* and rule 102 (1) and (2) of the Court of Appeal Rules 2022.
2. The grounds of the application are stated on the face thereof. They are that John Ndungu Njau died on 28th February 2024. That Anthony Kimondo Ndungu was issued with letters of Administration ad Litem on 17th April 2024 to represent his Estate, and that the application has been brought within one year from 28th February 2024 when John Ndungu Njau died.
3. The applicant swore and filed an affidavit dated 18th December 2024 in support of the application. He also filed submissions dated 16th January 2025 through the firm of M/s O. P. Ngoge Advocates and Associates. In both the supporting affidavit and the submissions, the applicant reiterates the grounds of the application that need not be reproduced here.



4. Rule 102 (1) and (3) of the Court of Appeal Rules 2022, under which the applicant has invoked the jurisdiction of this Court, 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. The section provides 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.”

5. The application is not opposed and has been brought within a year following the death of the deceased before the suit abated.

6. Upon considering the grounds of the application and the submissions, I am satisfied that the applicant has met the threshold for granting the orders sought.

Consequently, I allow the application dated 18th December, 2024 and order as follows:

- i. That John Ndungu Njau (deceased appellant), be and is hereby substituted by the applicant, Anthony Kimondo Ndungu the legal representative of the estate of the deceased.
- ii. The applicant shall within fourteen (14) days from the date of delivery of this ruling, file an Amended Record of Appeal, reflecting the substituted party in accordance with this ruling.
- iii. Thereafter the appeal shall be listed for hearing on a date to be fixed in the registry.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MAY, 2025.

L. ACHODE

JUDGE OF APPEAL

.....

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

Signed

DEPUTY REGISTRAR.

