



Elias v Njoka & 21 others; Njeru (Proposed Respondent) (Civil Appeal (Application) 10 of 2020) [2025] KECA 952 (KLR) (9 May 2025) (Ruling)

Neutral citation: [2025] KECA 952 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) 10 OF 2020
S OLE KANTAI, JW LESSIT & A ALI-ARONI, JJA
MAY 9, 2025**

BETWEEN

NJAGI NJERU ELIAS APPLICANT

AND

FAUSINO NJERU NJOKA & 21 OTHERS & 21 OTHERS & 21 OTHERS & 21 OTHERS & 21 OTHERS RESPONDENT

AND

JECINTA KIURA NJERU PROPOSED RESPONDENT

(Being a reference on an application for substitution of the appellant in an appeal from the Ruling (Muchelule, JA.) delivered on 16th May 2023 in Civil Appeal No. 10 of 2020)

RULING

1. This is a reference to the full court, pursuant to rule 57 of the [Court of Appeal Rules 2022](#), from the decision of a single judge of this Court (Muchelule, JA.), dated 16th May 2023. The learned single judge's ruling was made pursuant to an application brought under rules 42, 44, and 54 of this Court's Rules, seeking to substitute the name of Faustino Njeru Njoka with that of his widow, Jecinta Kiura Njeru, as the 1st respondent.
2. The application was supported by the grounds on the face of the application and the supporting affidavit of the applicant dated 24th February 2023, where he stated that the 1st respondent died on 7th October 2021 and hence he was seeking to substitute the deceased with his spouse and legal representative; further that he had initially faced challenges in substituting the 1st respondent as he was then not aware of who his legal representative was; which led to the denial of the request in the court's ruling dated February 3, 2022; subsequently, the applicant confirmed that Jecinta Kiura Njeru was indeed the widow and legal representative of the estate of deceased as she had sought and was issued a



limited grant of letters of administration ad litem in *Miscellaneous Succession Cause No. 82 of 2021* in the Principal Magistrate's Court at Siakago; the proposed amendments were necessary to ensure that all claims and issues raised by the applicant were addressed and directed to the appropriate parties; the application was submitted on time and would not prejudice the respondents in any way.

3. The application was not opposed.
4. Muchelule, JA., in his ruling of 16th May 2023, found that since the respondent died on 7th October 2021 and the application subject of this ruling was brought on 24th February 2023, well over one year after the death, the appeal had abated under rule 102(2) of this [Court's Rules](#).
5. Additionally, the judge found that the grant issued by the subordinate court to Jecinta Kiura Njeru related to ELC No. E012 of 2021 (O.S.). The representation did not relate to this appeal or any other case, as the grant was limited. There was, therefore, no evidence that Jecinta Kiura Njeru was the legal representative of the respondent's estate for the purposes of this appeal or at all.
6. The above findings by the learned judge precipitated the reference dated 23rd May 2023. The learned counsel for the applicant filed submissions dated 1st November 2024, wherein he contended that the appeal involved several respondents. Upon the demise of one respondent among many others, the appeal cannot abate against all respondents but only against the deceased party. Learned counsel argued further, that the ruling of 16th May 2023, stated that the suit had abated under rule 102(2) of the [Court of Appeal Rules, 2022](#). This can only be the position as pertains to the deceased party in the appeal, which means that the appeal remains active against the remaining twenty (20) respondents.
7. Learned counsel pointed out that the ruling was unclear regarding the status of the appeal against the other twenty (20) respondents. He contended that the matter should be heard and determined against the rest. Furthermore, he asserted that the court neglected to consider the evidence presented before it, that the intended substitute (1st respondent) is the spouse of the deceased. The intended 1st respondent cannot accept the benefits of being recognized as the spouse in one court while disregarding that relationship in this Court when faced with potential adverse outcomes for the deceased's estate. Furthermore, the applicant cannot compel the deceased's family to nominate a legal representative as a respondent in this appeal, and it is in the interests of justice that the intended 1st respondent, who holds letters of administration ad litem, be substituted in place of her husband.
8. We have considered the application, the submissions on record, and the law. It is trite law that when a single judge of this Court determines a matter, the single judge is exercising unfettered discretion on behalf of the court. Therefore, a full bench would only interfere with the exercise of such discretion if it is apparent that the single judge took into account an irrelevant matter which he/she ought not to have taken into account or failed to take into account a relevant matter which he/she ought to have taken into account or that he/she misapprehended the law applicable and the evidence before him or that his decision was plainly wrong.
9. It is not for the full court to assume that had it been sitting in place of the single judge, it would have arrived at a different result. If the full bench were to do so, it would replace the single judge's exercise of discretion with its own, which is not permissible under rule 57 of this [Court's Rules](#). Notably, a reference under that rule is not an appeal to the full court. In [Habo Agencies Limited v Wilfred Odhiambo Musingo](#) [2015] KECA 597 KLR, the court stated as follows:

We are also aware that a reference is not an appeal and the fact that the Court would have exercised its discretion differently is not a sufficient ground for interfering with the exercise



of discretion by a single judge. The Court can only interfere with the exercise of discretion for misdirection or non-direction.”

10. We concur with the single judge that the substitution of the widow of the 1st appellant with the deceased can only be granted if she has been generally appointed as the legal representative of the deceased's estate or if explicitly limited for the purposes of the appeal. The documents presented to the court relate to a limited grant for substitution in a separate suit. To that extent, we cannot fault the single judge.
11. The suit, however, abated only against the deceased and not entirely since the other twenty (20) respondents are alive. We believe the single judge overlooked this fact and committed an error, as the suit remains active against all the other respondents.
12. We, therefore, find the reference merited only to the extent that the appeal has not abated against the other twenty (20) respondents, and the appellant is at liberty to pursue the appeal against them.
13. The application was not opposed. In the circumstances, we order that costs do abide by the outcome of the appeal.

DATED AND DELIVERED AT NYERI THIS 9TH DAY OF MAY, 2025.

S. ole KANTAI

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JUDGE OF APPEAL

J. LESIIT

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JUDGE OF APPEAL ALI-ARONI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR

