



**Toloin (Suing as the legal Representative of the Estate of the Late Jonah Kipsaina) v Sawe
(All Suing as the Legal Representatives of the Late David Cheptum Sawe) & 5 others
(Civil Application E035 of 2023) [2025] KECA 1054 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1054 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT ELDORET
CIVIL APPLICATION E035 OF 2023
MA WARSAME, JA
JUNE 12, 2025**

BETWEEN

**AGNES JEROTICH TOLOIN (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF THE LATE JONAH KIPSAINA) APPLICANT**

AND

**RAEL TARLOCK SAWE PHILIP KIPROCK SAWE FRANCIS KIPKEMBOI
SAWE (ALL SUING AS THE LEGAL REPRESENTATIVES OF THE LATE DAVID
CHEPTUM SAWE) 1ST RESPONDENT**

KIPRONO ARAP TOROITICH 2ND RESPONDENT

**FRANCIS KIPSANG KIMUTAI (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF THE LATE WILSON KIMUTAI CHEROP) 3RD RESPONDENT**

ATTORNEY GENERAL 4TH RESPONDENT

CHIEF LAND REGISTRAR 5TH RESPONDENT

**JOHN KOSGEI TOROITICH (LEGAL REPRESENTATIVE OF THE ESTATE OF
THE LATE TOROITICH CHEBOI) 6TH RESPONDENT**

*(Being an application for substitution of the 2nd respondent in the appeal against the Judgment
of the High Court at Eldoret (Githinji, J.) dated 27th June, 2019 in HCCC No.10 of 2000)*

RULING

1. The notice of motion before the Court is dated 21st February, 2023 and is brought pursuant to Article 50 of the [Constitution](#), Section 1A & B of the [Civil Procedure Act](#), Order 24 Rule 3 of the [Civil Procedure Rules](#). The applicant being the administrator of the estate of the deceased, seeks to be substituted in place of the 2nd respondent, Jonah Kipsaina Cherutich (Deceased) in in Eldoret Civil



Appeal No. 93 of 2019 *John Kosgei Toroitich (suing legal representative of the estate of Toroitich Cheboi) vs Tarkok Sawe & 5 Others*.

2. The grounds in support of the application are that the 2nd respondent passed away on 14th January 2022, letters of administration were granted to the applicant on 7th November 2022 and the appeal, being Eldoret Civil Appeal No.93 of 2019 cannot proceed until the deceased is substituted.
3. I have considered the application before me and the law.

Contrary to the provisions stated by the applicant, the correct provision in seeking substitution of a party in the Court of Appeal lies in Rule 102 of the *Court of Appeal Rules 2022* which provides

102. Death of party to appeal

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 representative of the deceased person to be made a party in place of the deceased.
 2. If no application is made under sub rule (1) within twelve months from the date of the death of the appellant or respondent, the appeal shall abate.
 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.
 4. An application under sub rule (3) may be made before a single judge
4. The above provision is clear. The application must be made within 12 months of the death of the deceased. The 2nd respondent died on 14th January 2022. The application should have been filed by 7th February 2023 (Christmas recess excluded). This application was filed on 21st February 2023 by which time the appeal had abated.
 5. For that reason, the application before me fails and is hereby dismissed with no order as to costs.

DATED AND DELIVERED AT ELDORET THIS 12TH DAY OF JUNE, 2025.

M. WARSAME

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed.

Deputy Registrar.

