



**Tichu & 16 others v Ikere & 3 others (Sued jointly as administrators of the Estate of Ikere Gateau- (Deceased) & 2 others (Civil Application E023 of 2021) [2024] KECA 823 (KLR) (12 July 2024) (Ruling)**

Neutral citation: [2024] KECA 823 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPLICATION E023 OF 2021**

**F SICHALE, JA  
JULY 12, 2024**

**BETWEEN**

- KAMAU TICHU ..... 1<sup>ST</sup> APPELLANT**
- JACKSON WAWERU KAMAU ..... 2<sup>ND</sup> APPELLANT**
- SIMON KINYUA KAMAU ..... 3<sup>RD</sup> APPELLANT**
- DAVID WAINAINA KAMAU ..... 4<sup>TH</sup> APPELLANT**
- SAMUEL NJUGUNA KAMAU ..... 5<sup>TH</sup> APPELLANT**
- FRANCIS WAWERU KAMAU ..... 6<sup>TH</sup> APPELLANT**
- ISAAC MUGO KAMAU ..... 7<sup>TH</sup> APPELLANT**
- PAUL MURIGI KAMAU ..... 8<sup>TH</sup> APPELLANT**
- JOSHUA NJEKE KAMAU ..... 9<sup>TH</sup> APPELLANT**
- JAMES MWANGI KAMAU ..... 10<sup>TH</sup> APPELLANT**
- PAUL MURIGI KAMAU ..... 11<sup>TH</sup> APPELLANT**
- DANIEL MWANGI KAMAU ..... 12<sup>TH</sup> APPELLANT**
- PETER MAINA KAMAU ..... 13<sup>TH</sup> APPELLANT**
- DANIEL MWANGI KAMAU ..... 14<sup>TH</sup> APPELLANT**
- PETER MAINA KAMAU ..... 15<sup>TH</sup> APPELLANT**
- JOSEPH WAINAINA KAMAU ..... 16<sup>TH</sup> APPELLANT**
- EBRAHIM MURIITHI KAMAU ..... 17<sup>TH</sup> APPELLANT**

**AND**



**STEPHEN GITAU IKERE LOISE NYOKABI LUCY NYAMBURA IKERE  
SAMUEL KIBARU IKERE (SUED JOINTLY AS ADMINISTRATORS OF THE  
ESTATE OF IKERE GATEAU- (DECEASED) ..... 1<sup>ST</sup> RESPONDENT  
THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT  
THE COMMISSIONER OF LANDS ..... 3<sup>RD</sup> RESPONDENT**

*(Being an Application for Substitution pursuant  
to Rule 99 (1) of the Court of Appeal Rules 2010)*

## **RULING**

1. By the Motion on Notice dated 10<sup>th</sup> November 2023, brought pursuant to Rule 99 (1) of the [Court of Appeal Rules](#), 2010 and all other enabling provisions of the Law, David Wainaina Kamau (hereinafter the applicant), has urged this Court sitting as a Single Judge to grant the following orders:
    - “(i) That David Wainaina Tichu be substituted in place of Kamau Tichu (now deceased) as the legal representative of the Estate of the 1<sup>st</sup> appellant.
    - (ii) That costs of this application be provided for.”
  2. The motion is supported on the grounds on the face of the motion and an affidavit sworn by the applicant, who deposed inter alia that the 1<sup>st</sup> appellant was now deceased (hereinafter the deceased), having died on 10<sup>th</sup> November 2022.
  3. He further deposed that being the deceased’s son, he had since taken out letters of Administration Ad Litem to enable him proceed with this cause in place of the deceased and that the deceased’s cause of action indeed survives him and ought to be fully and competently prosecuted to its final determination by this Honourable Court and that in view of the foregoing, and in the interests of justice the motion was for allowing.
  4. There was no response on part of the respondents’ despite being served with the application on 29<sup>th</sup> January 2024. The applicant’s motion is therefore unopposed.
  5. It was submitted for the applicant that the suit herein revolved around overlapping pieces of land belonging to the deceased and the 1<sup>st</sup> respondent who was also deceased and who had been since substituted by his surviving children who were now the Administrators’ of his Estate.
  6. It was further submitted that the applicant had since taken out Letters of Administration Ad Litem in respect of the Estate of the deceased and that the instant motion was not opposed. Consequently, I was urged to allow the motion as prayed.
  7. I have carefully considered the motion, the grounds thereof, the supporting affidavit, the annexures thereto, the applicant’s submission and the law.
  8. As I had indicated earlier, the applicant’s motion is not opposed.
- Rule 99 (1) of the [Court of Appeal Rules](#) pursuant to which the applicant’s is premised is titled; “Death of party to appeal.”



9. The same provides as follows:

“(1) An appeal shall not abate on the death of the appellant or the respondent but the Court shall, on the application of any interested person, cause the legal representative of the deceased 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 death of the appellant or respondent, the appeal shall abate.

10. In the instant case, the deceased died on 10<sup>th</sup> November 2022 and the applicant’s motion was filed in Court on 10<sup>th</sup> November 2023, which is well with the 1-year period provided for by Rule 99 of the *Court of Appeal Rules* (*supra*). There is no doubt therefore that the applicant’s motion dated 10<sup>th</sup> November 2023 is for allowing.

11. Accordingly, I find the applicant’s motion dated 10<sup>th</sup> November 2023, to be merited and I accordingly allow the same as prayed.

12. Costs shall be in the cause.

It is so ordered.

**DATED AND DELIVERED AT NAKURU THIS 12<sup>TH</sup> DAY OF JULY, 2024.**

**F. SICHALE**

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**JUDGE OF APPEAL**

