



**Gatambia v King'ora & 3 others (Civil Appeal (Application)
144 of 2024) [2024] KECA 1720 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1720 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) 144 OF 2024
JW LESSIT, JA
NOVEMBER 28, 2024**

BETWEEN

NIMROD IRUNGU GATAMBIA APPLICANT

AND

DUNCAN KAMAU KING'ORA 1ST RESPONDENT

**STEPHEN IRUNGU INTENDED SUBSTITUTE/RESPONDENT KAHURO
LAND DISPUTE TRIBUNAL 2ND RESPONDENT**

THE PRINCIPAL MAGISTRATE'S MURANG'A 3RD RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT

RULING

(An application for substitution of deceased 1st respondent Duncan Irungu Gatambia with one Stephen Irungu)

1. By a notice of motion dated 14th December, 2023, brought pursuant to rule 97 of the Court of Appeal Rules, the applicant, Nimrod Irungu Gatambia, seeks orders that the Court be pleased to substitute, Stephen Irungu, for the 1st respondent, Duncan Kamau, (deceased) and that costs of this application be provided for.
2. The grounds in support of the motion and in the supporting affidavit sworn by the applicant are that, amongst other things, the proposed substitute, Stephen Irungu, is the personal representative and administrator of the deceased's estate, and that he thus has locus standi to be substituted for the deceased in the appeal.
3. In the written submissions of the applicant's counsel it was urged that on the 21st of July, 2020, Muranga Chief Magistrate Court issued Letters of Administration Ad Litem, to the named intended substitute.



4. Counsel for the applicant urged that the application, though opposed, does not prejudice the respondent in any way and that he should replace his father in this appeal, as he has locus standi to be substituted for the deceased. He urged the court to exercise its discretion in favour of the applicant, noting that the applicant had acted with speed to bring the application.
5. The proposed substitute for the deceased 1st respondent, Stephen Irungu appointed counsel, Messrs. Nderi & Kingati Advocates, and then filed his sworn affidavit dated 21st July [the year is not clear] opposing the application. He has annexed a copy of a limited grant of letters of administration ad litem dated 13th November, 2020 appointing the applicant herein as the administrator of the estate of the deceased. He deposed that the limited grant of letters of administration ad litem bearing his name and annexed to the applicant's affidavit does not exist in the respective Succession Cause file, that the only one in that file is the one in the applicant's name. Further, that he saw the one bearing his name in social media, saying if at all it was obtained, it was so obtained without his knowledge or consent.
6. I have considered this application. The applicant invoked rule 97 of the Court of Appeal Rues 2010. That rule deals with 'Rights of respondent when appeal is withdrawn.' Clearly, that rule does not apply to the application brought before me. The applicable rule is 99 that provides:

“99. Death of party to appeal

- a. 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.
- b)
- c) [Emphasis added]

7. In an application of this nature, the applicant needs to establish that the intended substitute is a personal representative of the deceased through grant of letters of administration, or for reason of being a close family member like a spouse or child.
8. In this application, both the applicant and the intended substitute have each annexed a grant of letters of administration ad litem. What's more, the intended substitute has trashed the grant alleged to have been granted to him, which is in his name as none existent in the Succession Cause in respect of the estate of the deceased. The applicant did not respond to the denial by the intended substitute in regard to the validity of the grant he relied on, neither has he objected the filing of the affidavit or the presentation of the evidence and the impugned limited grant.
9. Having considered the application, the affidavits filed therein and submission by counsel for the applicant, I am not satisfied that the applicant discharged his burden to establish that the intended substitute of the deceased respondent was a personal representative of the deceased or had locus standi to substitute him.
10. The result is that the application is declined and accordingly dismissed.

DATED AND DELIVERED AT NYERI THIS 28TH DAY OF NOVEMBER, 2024.

J. LESIIT

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JUDGE OF APPEAL



I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

