



Muiru alias Njeri v Njenga (Suing on Behalf of the Estate of Elizabeth Ngendo, Deceased) & another (Civil Appeal (Application) E729 of 2023) [2024] KECA 1632 (KLR) (8 November 2024) (Ruling)

Neutral citation: [2024] KECA 1632 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E729 OF 2023
M NGUGI, JA
NOVEMBER 8, 2024
[IN CHAMBERS]**

BETWEEN

**LIVINGSTONE MWAURA MUIRU ALIAS LIVINGSTONE MWAURA
NJERI APPLICANT**

AND

**MINNE WANJIKU NJENGA (SUING ON BEHALF OF THE ESTATE OF
ELIZABETH NGENDO, DECEASED) 1ST RESPONDENT**

FREDRICK GICHUHI NJENGA 2ND RESPONDENT

*(Being an application for substitution of the respondent
in Court of Appeal Civil Appeal No. E729 of 2023)*

RULING

1. In the application dated 13th September 2024, the applicant, Fredrick Gichuhi Njenga, the legal representative of the estate of the respondent, Minnie Wanjiku Njenga (deceased) asks the Court to allow his substitution as a party to the suit in place of the deceased respondent. The application is brought under rule 87 of the [Court of Appeal Rules](#) and is based on the grounds set out on its face and supported by an affidavit sworn by the applicant on 13th September 2024.
2. The applicant avers that he is the son of the deceased, who died on 25th November, 2023. He avers that he is not a party to the proceedings but during the lifetime of the deceased, he was aware of the proceedings, and it is appropriate that he be substituted in her place so that he can take care of her interests. He avers that he has obtained Letters of Administration dated 16th May 2024 in Nairobi Succession Cause No. E022 of 2024 in order to continue prosecuting the appeal, and it is in the interest



of justice that the order for substitution be made. He avers further that no prejudice will be suffered by the appellant should the application be allowed.

3. The respondent has not filed a response to the application despite service on 16th September 2024 as indicated in an affidavit of service on the record. No submissions have been filed in support or opposition to the application.
4. While the applicant invokes the provisions of rule 87 of this *Court's Rules*, the proper rule in the circumstances of this case, where there is an existing appeal, is rule 102, which 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 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.
5. I have considered the application and the affidavit in support. I note from the death certificate annexed thereto that the deceased died on 25th November, 2023. The present application was filed on 13th September 2024, well within the timeline prescribed under rule 102.
6. I note, however, that the applicant was issued with a Limited Grant on 16th May, 2024, a copy of which has been annexed to the application. The grant is limited

“for the sole purpose of representation in Kikuyu Succession Cause No. 159 of 2019- Estate of Elizabeth Ngendo and Kiambu High Court Succession Cause No. 29 of 2019-Estate of Harriet Karura Alias Harriet Karura Ndungi.”
7. The applicant has not placed before this Court letters of administration authorizing him to represent the estate of the deceased in Court of Appeal Civil Appeal No. E729 of 2023. Accordingly, I am unable to grant the orders sought in the application dated 13th September 2024, and I hereby dismiss it.
8. The applicant is at liberty to obtain and place the appropriate letters of administration in respect of the appeal before this Court and file an application for substitution in respect thereto.
9. There shall be no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2024

MUMBI NGUGI

JUDGE OF APPEAL

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

signed

DEPUTY REGISTRAR

