



REPUBLIC OF KENYA



KENYA LAW
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**Murangiri & another v Njoka & 21 others & another (Civil Appeal
(Application) 10 of 2020) [2023] KECA 636 (KLR) (3 February 2023) (Ruling)**

Neutral citation: [2023] KECA 636 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) 10 OF 2020**

**J MOHAMMED, JA
FEBRUARY 3, 2023**

BETWEEN

SOSPETER KITHUMBU MURANGIRI APPELLANT

AND

NJAGI NJERU ELIAS PROPOSED APPELLANT

AND

FAUSTINO NJERU NJOKA & 21 OTHERS 1ST RESPONDENT

JECINTA KIURA NJERU 2ND RESPONDENT

(Being an application to substitute the appellant, Sospeter Kithumbi Murangiri and the respondent Faustino Njeru Njoka from the judgment of the Environment and Land Court of Kenya at Embu (Y.M. Angima, J.) dated 26th September, 2019 in Embu ELC No. 71A of 2014)

RULING

Background

1. The Notice of Motion dated June 1, 2022 is expressed to be brought under Rules 42, 44 and 54 of the [Court of Appeal Rules, 2010](#) Sospeter Kithumbi Murangiri and Njagi Njeru Elias (the applicants) seek orders in the main;
 - a. That this Court do grant leave to the appellant/applicant to substitute the name of Sospeter Kithumbi Murangiri, with the name of Njagi Njeru Elias as the appellant.
 - b. That this Court do grant leave to the appellant/applicant to substitute the name of Faustino Njeru Njoka with the name of Jecinta Kiura Njeru in the capacity of the 1st respondent.
 - c. That the costs of this application be in the cause.



Faustino Njeru Njoka & 21 others are the respondents herein whereas Jecinta Kiura Njeru is the proposed 1st respondent.

2. The application is premised on the grounds that Sospeter Kithumbu Murangiri is said to have been representing Ikandi Clan (the Clan) in Embu ELC No 71A of 2014 suit in his capacity as Chairman but he has been having persistent health challenges that have hindered him from attending to and prosecuting this case to protect the interests of the Clan among other duties and as such it is proposed by the Clan through their elections held on September 11, 2020 that he be retired as the Chairman and that Njagi Njeru Elias, the proposed appellant, takes over from him as the Chairman and takes over the conduct of the appeal (Civil Appeal No 10 of 2020).
3. Further, Faustino Njeru Njoka is deceased and his wife Jecinta Kiura Njeru is proposed to substitute him as the 1st respondent in her capacity as the legal representative of his estate.
4. All this information is contained in the affidavit of Njagi Njeru Elias the proposed appellant sworn on June 1, 2022. There is no response filed to the instant application despite service.

Determination

5. I have considered the application, the affidavits, the submissions, the authorities cited and the law.
6. This application seeks 2 orders:
 - a. That this Court do grant leave to the appellant/applicant to substitute the name of Sospeter Kithumbu Murangiri, with the name of Njagi Njeru Elias as the appellant;
 - b. that this Court do grant leave to the appellant/applicant to substitute the name of Faustino Njeru Njoka with the name of Jecinta Kiura Njeru in the capacity of the 1st respondent.
 - c. That the costs of this application be in the cause.
7. On the prayer that this Court do grant leave to the appellant/applicant to substitute the name of Sospeter Kithumbu Murangiri with the name of Njagi Njeru Elias as the appellant, it is notable that the Ikandi Clan is in agreement that Sospeter Kithumbu Murangiri be replaced by Njagi Njeru Elias in view of health considerations. Further, it is notable that Njagi Njeru Elias has been elected as Chairman of the Ikandi Clan with legal authority to represent the clan in the appeal.
8. In the circumstances, I grant leave to the appellant/applicant to substitute the name of Sospeter Kithumbu Murangiri with the name of Njagi Njeru Elias as the appellant in Civil Appeal No 10 of 2020.
9. On the application seeking leave to substitute the name of Faustino Njeru Njoka with the name of Jecinta Kiura Njeru, I note that there is on record a letter dated April 20, 2022 from the office of the Medical Superintendent, Embu Level 5 Hospital indicating that an autopsy was carried out on the body of Faustino Njeru Njoka on October 12, 2021. However, there is on record no copy of a death certificate to indicate when Faustino Njeru Njoka passed on.
10. Rule 102 of the *Court of Appeal Rules, 2022* provides as follows:

“ 102.

- (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.” [Emphasis supplied].

11. In the supporting affidavit sworn by Njagi Njeru Elias, it is deponed:

“I have since come to the (sic) knowledge that Jecinta Kiura Njeru is the legal and sole wife of the deceased, thus is supposed to, and should be the legal representative of the deceased.”

12. From the record, there is no evidence that Jecinta Kiura Njeru is the legal representative of Faustino Njeru Njoka. In the circumstances, I decline to grant leave to the applicant to substitute Jecinta Kiura Njeru in place of Faustino Kiura Njeru in the capacity of the 1st respondent.

13. The upshot is that the notice of motion dated June 1, 2022 partly succeeds. I make no order as to costs.

DATED AND DELIVERED AT NYERI THIS 3RD DAY OF FEBRUARY, 2023.

JAMILA MOHAMMED

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

