



Elias v Njoka & 21 others; Njeru (Proposed Respondent) (Civil Appeal (Application) 10 of 2020) [2023] KECA 1625 (KLR) (16 May 2023) (Ruling)

Neutral citation: [2023] KECA 1625 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) 10 OF 2020
AO MUCHELULE, JA
MAY 16, 2023**

BETWEEN

NJAGI NJERU ELIAS APPELLANT

AND

FAUSTINO NJERU NJOKA & 21 OTHERS RESPONDENT

AND

JECINTA KIURA NJERU PROPOSED RESPONDENT

(Being an application under Rule 87 (3) of the Court of Appeal Rules, 2022 for substitution of the appellant In Civil Appeal No. 10 of 2020)

RULING

1. The applicant Njagi Njeru Elias is the appellant in the appeal he filed against the respondent Faustino Njeru Njoka and 21 others from the judgment of the Environment and Land Court at Embu (Y.M. Angima, J) delivered on 26th September 2019 in ELC No. 71A of 2014. While the appeal was pending, the respondent died on 7th October 2021. On 3rd February 2022 this Court dismissed the applicant's application that sought that the respondent be substituted with Jecinta Kiura Njeru whom he stated was the respondent's widow and legal representative of his estate. The application was dismissed because it had not been shown that Jecinta Kiura Njeru was the legal representative of the respondent's estate.
2. The applicant has come back to this court under Rules 42, 44 and 54 of the *Court of Appeal Rules* seeking similar orders of substitution. In the grounds and supporting affidavit in respect of the Motion dated 24th February 2023, he has stated that he has since come by the evidence that the said Jecinta Kiura Njeru was indeed the respondent's widow; that on 25th October 2021 in Siakago Principal Magistrate's Court Succession Cause Misc. No. 82 of 2021, she had successfully petitioned and obtained letters of



administration ad litem on the basis that she was the widow of the respondent. She sought the grant to enable her substitute the deceased in ELC No. E012 of 2021 (O.S.) that was pending.

3. This application was not opposed.
4. The respondent died on 7th October 2021. The represent motion was brought on 24th February 2023. This was well over one year following the death. Under Rule 102(2) of this *Court's Rules*, the appeal had abated.
5. In any case, the grant issued by the subordinate court was limited only to Jecinta Kiura Njeru substituting the respondent in ELC No. E012 of 2021 (O.S.). The representation did not relate to this appeal, or to any other case. There is therefore no evidence that Jecinta Kiura Njeru is the legal representative of the respondent's estate for the purposes of this appeal, or at all.
6. Consequently, I dismiss the application. Further, it is ordered that, under Rule 102(2), this appeal has abated, and shall be marked as such.

DATED AND DELIVERED AT NYERI THIS 16TH DAY OF MAY 2023

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

A.O. MUCHELULE

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JUDGE OF APPEAL

