



REPUBLIC OF KENYA



**Mwendwa v Mire; Nteere (Applicant) (Civil Appeal (Application)
3 of 2019) [2023] KECA 1609 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KECA 1609 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL (APPLICATION) 3 OF 2019
J MOHAMMED, JA
SEPTEMBER 22, 2023**

BETWEEN

JAPHET NTEERE MWENDWA APPELLANT

AND

FATUMA MOHAMUD MOHAMMED MIRE RESPONDENT

AND

FRIDAH MAKANDI NTEERE APPLICANT

*(Application under Rule 99 of the Court of Appeal Rules, 2010
for substitution of the appellant in Civil Appeal No. 3 of 2019)*

RULING

1. The Notice of Motion dated 29th July, 2020 was listed for hearing before me. The application is expressed to be brought under Rule 44, 47, 99(1) and 99(3) of the Court of Appeal Rules.
2. The grounds in support of the application are:
 - a. that the appellant herein, Japhet Nteere Mwendwa (the deceased) passed away on 15th September, 2019;
 - b. that the applicant, (Fridah Makandi) has been granted Letters of Administration ad Litem of the Estate of the deceased appellant and is desirous of proceeding with the suit; and
 - c. that no prejudice shall be occasioned if the application is granted.
3. The applicant seeks the following orders:
 - a. that this Court be pleased to substitute Japhet Nteere Mwendwa (the appellant) who is now deceased with Fridah Makandi Nteere who is the deceased's legal representative; and



- b. that the costs be in the cause.
4. On the date of hearing, a letter of consent dated 1st March, 2023 was brought to my attention. The terms of the consent were in the following terms:
- “By consent of the advocates for the appellant and for the respondent, the notice of motion dated 29th June, 2020 be allowed in terms of prayer No. 1.”
5. In the circumstances, and by consent of counsel for the parties, Japhet Nteere Mwendwa is hereby substituted with Fridah Makandi Nteere as the appellant herein.
6. Costs of the application to abide by the outcome of the appeal.

DATED AND DELIVERED AT NYERI THIS 22ND DAY OF SEPTEMBER, 2023.

JAMILA MOHAMMED

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

