



**Omar alias Zuhura Wangare Kamandura v Chege (Civil Appeal (Application)
385 of 2018) [2023] KECA 1200 (KLR) (6 October 2023) (Ruling)**

Neutral citation: [2023] KECA 1200 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 385 OF 2018
S OLE KANTAI, JA
OCTOBER 6, 2023**

BETWEEN

**ZUHURA WANGARE OMAR ALIAS ZUHURA WANGARE
KAMANDURA APPELLANT**

AND

MARIAM NJOKI CHEGE RESPONDENT

*(An appeal from the Judgment of the High Court of Kenya at Nairobi
(Ongo, J.) dated 5th February, 2016 in Succession Cause No. 1399 of 2003)*

RULING

1. The applicant, Fatuma Waithira Kamandura has brought a motion under the old rule 99 sub rule 2 and 3 (this is currently rule 102 of The *Court of Appeal Rules, 2022*) and section 3A and 3B of the *Appellate Jurisdiction Act* praying that she, being the legal representative of the deceased appellant Zuhura Wangari Omari *alias* Zuhura Wangare Kamandura be made a party to the appeal in place of the deceased appellant. She also prays that the appeal be revived. In grounds in support of the motion and in a supporting affidavit she says that the deceased (appellant) died on May 25, 2020 during the Covid-19 period when court operations had been suspended; that she petitioned for grant of letters of administration on January 22, 2021 but that petition was filed in the wrong court; that a petition was later filed in the correct court and a grant of letters of administration was eventually made on April 25, 2023 but the appeal had abated on May 25, 2021. Further, that delay in obtaining grant of letters of administration *ad litem* was not intentional but was as a result of factors beyond her control.
2. Marian Njoki Chege, the respondent opposes the application and in a replying affidavit she says that she is a beneficiary of the estate; that she has not been served with an application dated June 21, 2023 thus denying her an opportunity to respond to it. She was not aware of the application for grant of letters of administration and there were efforts to cut her off the estate where her husband was a son



of the deceased Kamandura Ali. She thinks in the premises that this application should not be heard and, at paragraphs 7 and 8 of the replying affidavit:

7. That there has been a running legal battle between the applicant, her siblings on one side and me on the other where they have sought to disinherit me from my late husband's inheritance as a son of Kamandura Ali (deceased).
 8. That the High Court in succession cause 1399 of 2003 the subject of abated appeal herein, decided I should get my husband's portion but the other side and the deceased executrix (Zuhura Wangari Omari) have refused to effect changes which is seven (7) years from when Lady Justice Rose Ougo gave Orders."
3. She draws my attention to the fact that she has also filed an application for substitution in Nairobi High Court succession cause No 1399 of 2003 In the Matter of the Estate of Kamandura Ali (deceased) that is related to the same estate and involves the same parties and is scheduled for hearing on October 2, 2023. In a parting shot the respondent says at paragraph 12 of the replying affidavit:
12. That the application is prejudicial to me as a beneficiary in clearly defined respects, under the last will and testament of Kamandura Ali (deceased), as I have not been able to enjoy the fruits of my inheritance since November 5, 1992 when the patriarch passed on, which is about three decades now."
4. Both sides filed written submissions which I have perused and considered.
5. As I understand it the applicant herein is a daughter of the deceased Zuhura Wangare Omar *Alias* Zuhura Wangare Kamandura and the late Kamandura Ali (also deceased) while the respondent Marian Njoki Chege is a daughter in law of that family. I am told that the appellant, who was the administratrix of the estate of her late husband Kamanudra Ali died on May 25, 2020 when the world was battling Covid-19 pandemic which caused courts in Kenya and elsewhere to suspend operations. That suspension caused certain procedural steps not to be taken or be taken on time. The applicant says that she took necessary steps when she was able to.
6. I am satisfied here that the applicant who is a daughter of the deceased (the deceased was the appellant and administratrix of the estate of her late husband Kamandura Ali) is entitled to an order of substitution so that she can take the place of her late mother and the issue of distribution of the estate can then be pursued. I am also satisfied that the applicant is entitled to an order to revive the appeal in terms of rule 102, The [Court of Appeal Rules, 2022](#). I allow the motion dated June 21, 2023. The appeal be and is hereby revived and the applicant, Fatuma Waithira Kamandura being the legal representative of the deceased appellant Zuhura Wangari Omari alias Zuhura Wangare Kamandura be and is hereby made a party in place of the deceased appellant. It being a family matter let each party meet their costs.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF OCTOBER, 2023.

S. OLE KANTAI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

