



**In re Estate of the Late Daniel Toroitich Arap Moi (Deceased) (Civil Appeal (Application) 38 of 2016) [2022] KECA 1158 (KLR) (18 October 2022) (Ruling)**

Neutral citation: [2022] KECA 1158 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) 38 OF 2016**

**LK KIMARU, JA**

**OCTOBER 18, 2022**

**IN THE MATTER OF THE ESTATE OF THE LATE  
DANIEL TOROITICH ARAP MOI (DECEASED)**

**BETWEEN**

**ZEHRABANU (ZAINABU) JANMOHAMED (SENIOR COUNSEL) APPLICANT**

**AND**

**JOSEPH LEKAMARIO & OTHERS ..... RESPONDENT**

*(A notice of Motion under Article 159 (d) of the Constitution of Kenya, 2010, Section 3A and 3B of the Appellate jurisdiction Act, Rules 51 (4), 99 (3) of the Court of Appeal Rules, 2010)*

**RULING**

1. There is a pending appeal between Joseph Lekamario & Others vs African Wildlife Foundation & 2 Others (i.e. Civil Appeal No. 38 of 2016)
2. The appeal was scheduled to be heard on 16<sup>th</sup> June, 2020. However, on that day, the Court was informed that the 2<sup>nd</sup> Respondent Daniel Toroitich Arap Moi had died and therefore the appeal could not proceed without the 2<sup>nd</sup> Respondent being substituted. In its ruling of even date, the Court allowed the application for adjournment. At the material part of the ruling, the Court had this to say:

‘We need to give the 2<sup>nd</sup> Respondent’s family time to file the application for substitution to enable them proceed with the appeal. We think the application for adjournment is not unreasonable. We allow it and adjourn the matter to another date to be communicated by the Registrar. We also urge counsel for the 2<sup>nd</sup> respondent to pursue the issue of substitution with dispatch to enable us proceed with the appeal without too much delay in view of the presentations by Mr. Ochiel’.



3. Pursuant to these directions issued by the Court, the 2<sup>nd</sup> Respondent's advocate did file an application dated 4<sup>th</sup> February, 2021 pursuant to the then Rule 99 (3) (now Rule 102 (3) of the Court of Appeal Rules 2022 seeking to have the 2<sup>nd</sup> Respondent, Daniel Toroitich Arap Moi substituted by his legal representative Zehrabanu Janmohamed S.C. In the affidavit in support of the application, a grant of probate with written will issued in Nairobi High Court Succession Cause No. 405 of 2020 dated 9<sup>th</sup> October, 2020 is annexed.
4. The application is not opposed. Indeed a consent was filed by the advocates of the parties to this appeal on 21<sup>st</sup> July, 2021 and filed before this Court on 17<sup>th</sup> August, 2021.
5. In the circumstances therefore, this Court allows the application for substitution in the following terms:
  - i. Zehrabanu Janmohamed S.C. is hereby allowed to substitute Daniel Toroitich Arap Moi (deceased) as the 2<sup>nd</sup> Respondent in this appeal.
  - ii. There shall be no orders as to costs.

**DATED AT NYERI THIS 18<sup>TH</sup> DAY OF OCTOBER, 2022.**

**L. KIMARU**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

