



**Mose & another v Co-operative Bank of Kenya (Civil Appeal (Application)
338 of 2019) [2022] KECA 1257 (KLR) (7 November 2022) (Ruling)**

Neutral citation: [2022] KECA 1257 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) 338 OF 2019
LK KIMARU, JA
NOVEMBER 7, 2022**

BETWEEN

MARY KEMUMA MOSE 1ST APPLICANT

ESTHER SHANICE OMWENGA 2ND APPLICANT

AND

CO-OPERATIVE BANK OF KENYA RESPONDENT

(An appeal against the judgment and decree of the High Court of Kenya (Nzioka wa Makau, J.) dated 10th February, 2015 in Nairobi ELC Cause No. 449 of 2013)

RULING

1. Onesmus Omwenga Maroko, (the deceased), the respondent in the appeal, died on 6th August, 2021. Mary Kemuma Mose and Esther Shanice Omwenga (respectively, widow and daughter of the deceased), the applicants, obtained limited grant of Letters of Administration Ad Litem on 26th January, 2022 for the purpose of substituting the respondent in this appeal. The limited grant was issued by the High Court in Nairobi Succession Cause No. E2536 of 2022. The advocate for the applicants predicated the application for substitution on the Civil Procedure Rules instead of the Rules of this Court.
2. Be as it may, the application was lodged before this Court on 12th October, 2022 after the appeal had abated since no application to substitute the deceased was made within twelve (12) months from the date of the deceased's death as provided under Rule 102(1) of the Court of Appeal Rules, 2022. It provides thus:

“If no application is made under sub-rule (1) within twelve months from the date of the death of the appellant or the respondent, the appeal shall abate.”



3. In the premises therefore, the application is without merit and is hereby dismissed but with no orders as to costs since the appellant did not file a response to the application. However, the applicants are not without a remedy. They are at liberty to file an appropriate application for revival of the appeal under Rule 102(3) of the Court of Appeal Rules, 2022.

4. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF NOVEMBER, 2022.

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR

