

IN THE COURT OF APPEAL OF KENYA
AT NAKURU

Civil Case 464 of 1998

LAWRENCE M. MAIKWEKI.....PLAINTIFF

VERSUS

MICHAEL NDICHU NDUNGI.....1ST DEFENDANT

PETER KAIRU KIAL.....2ND DEFENDANT

TIMOTHY KAMAU GITHOGORI.....3RD DEFENDANT

DAVID NJOROGE MBUGUA.....4TH DEFENDANT

RULING

Rule 83(1) provides:

An appeal shall not be instituted in the name of a person who is dead but may be instituted in the name of his legal representative.”

It is clear from that rule that an appeal cannot be instituted in the name of a dead person and that it can only be instituted in the name of the legal representative of the deceased person.

The rule is not qualified in any way.

In the result Civil Appeal No. 36 of 2008 is incompetent having been instituted in the name of a dead person.

Accordingly, the application is allowed with the result that Civil Appeal No. 36 of 2008 is struck out with no orders as to costs.

Dated and delivered at Nakuru this 6th day of March, 2009

P. K. TUNOI

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JUDGE OF APPEAL
E.M. GITHINJI

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JDUGE OF APPEAL
J.W. ONYANGO OTIENO

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR