



REPUBLIC OF KENYA



KENYA LAW
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Kyalo & another v Cellz R US Limited; Kyalo (Applicant) (Civil Appeal E119 of 2022) [2025] KEHC 11582 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11582 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E119 OF 2022**

EN MAINA, J

JULY 31, 2025

BETWEEN

SILVESTER MUTISYA KYALO 1ST APPELLANT

SUSANA NZISA MULI 2ND APPELLANT

AND

CELLZ R US LIMITED RESPONDENT

AND

MARTIN MUTETI KYALO APPLICANT

RULING

1. By the Notice of Motion dated 26th March 2025, the Applicant seeks an order for substitution of the 1st Appellant, Silvester Mutisya Kyalo, with himself as the 1st Appellant is now deceased. He has to the supporting affidavit annexed a death certificate to confirm the fact of death and a Grant of letters of Administration ad litem to confirm his capacity to bring this application.
2. In reply to the application, the 2nd Appellant has filed a replying affidavit sworn on 9th April, 2025. In the affidavit she deposes that the deceased is her son and the Applicant is her grandchild. She also deposes that the mother of the Applicant left the deceased a long time ago and that when he died he was buried on her land. Other than that she deposes that when her son died, the Applicant's brother filed a suit for compensation secretly and it was only by the court's intervention that she was enjoined to the case. Other than that, she does not oppose the application her contention being that she is entitled to half the decretal sum.
3. Counsel for the Respondent intimated that his client was not opposed to the application.
4. The power of this court to substitute a deceased Plaintiff or Order 24 of the Civil Procedure Rules. Rules 2 and 3 states:



Defendant flows from

- “(2) Procedure where one of several plaintiffs or defendants dies and right to sue survives -

Where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

- (3) Procedure in case of death of one of several plaintiffs or of sole plaintiff -

(1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff:

Provided the court may, for good reason on application, extend the time.”

5. In the instant case the 1st Appellant was the 1st Plaintiff in the case in the court below. There is proof that he is deceased. The claim herein was one for compensation for fatal injuries sustained by his father in a motor accident. Damages were awarded under the *Law Reform Act* and the Fatal Accident’s Act. The cause of action is therefore one that survived him. The claim being one for compensation for personal injuries it cannot survive the 2nd Appellant alone and as the Applicant is the legal representative of the 1st Appellant by virtue of the grant of letters of administration ad litem issued on 25th March 2025, his application is merited and is allowed.
6. It is however instructive that the grant of letters of administration ad litem does not extend to the distribution of the assets of the deceased and a full grant must be obtained.
7. The upshot is that the application dated 26th March 2025 is allowed and orders are granted as prayed.
8. The costs of the application shall be borne by the Applicant.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 31ST DAY OF JULY 2025.

E.N. MAINA

JUDGE

In the presence of:



Ms Ngechu for the Respondent

Ms Mutunga for Musyimi for 1st Applicant

Geoffrey - Court Assistant

