



**Seda v Teleposta Pension Scheme (Environment & Land Case
527 of 2018) [2023] KEELC 19092 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19092 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 527 OF 2018**

J OMANGE, J

JULY 27, 2023

BETWEEN

MILICENT SEDA PLAINTIFF

AND

TELEPOSTA PENSION SCHEME DEFENDANT

RULING

1. The Applicants application dated May 16, 2023 seeks the following reliefs;
 - a. That this Honourable Court makes an order for extension of time to file an application for reinstatement of the suit herein.
 - b. That the court be pleased to grant any other order.
2. The application is brought on the grounds that the plaintiff passed away on April 18, 2021 from Covid related complications. Subsequently, there was a delay in filing an application for substitution of the plaintiff who died on April 18, 2021. This resulted in the dismissal of the suit on June 30, 2022. It is the applicants case that the failure to apply for substitution within the one year provided by the law was caused by delay in obtaining letters of administration, which in turn was caused by delay by the registry in forwarding the matter for publication in the Kenya gazette.
3. The Trust Secretary of Defendant filed a Replying Affidavit in which he recounted the number of times the matter was adjourned to allow the applicant to file for substitution. This delay had greatly prejudiced the Defendant.
4. The application was canvassed by way of written submissions. Counsel for the Plaintiff urged the court to allow the application so as to allow the applicant to file an application for revival of the suit and substitution so that the matter can be determined on merit. He submitted that no prejudice would be suffered by the Defendant if the substitution was allowed.



5. On the other hand, counsel for the Defendant submitted that the applicant has not given sufficient cause that would enable the court to allow the application. In any event, counsel argued that the application had no merit.
6. I have considered the application, the Replying Affidavit and the submissions by counsel. The only issue the court has to determine is whether the application for extension of time is merited.
7. The courts have had occasion to address the issue of extension of time. In the case of *Edith Gichungu Koine v Stephen Njagi Thoitih* [2014] eKLR Odek JJA stated:

“Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”
8. The period of the demise of the Plaintiff coincided with the Covid period. This was a period of great disruption at all levels. All sectors were affected. I note that the plaintiff died of covid 19 related complications. Considering the stigma and fear that surrounded the disease at the time it is probable that this could have affected the family in the manner described. This application follows an earlier one which was struck out for failure to seek extension of time. This omission cannot be visited upon the applicant who had instructed a counsel to appear for her.
9. Article 159 of the *Constitution* places on the court the responsibility to facilitate access to substantive justice. In the context of this case this would require that matter be ventilated and determined on merit.
10. Considering the disruption that was occasioned by Covid and the personal loss that the applicant was dealing with, I find that though the delay was considerable, this is a fit case for the court to exercise its discretion to extend time to file the application for substitution. Consequently, the application is allowed as follows;
 - a. Extension of time to file the application for reinstatement and substitution is granted.
 - b. The applicant should file the application within 30 days.
 - c. Costs of the application are to abide the main suit

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 27TH DAY OF JULY 2023.

JUDY OMANGE

JUDGE

