



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL CASE NO. 251 OF 2015**

**KASIMU MUNYITHYA MWANJIA** (Suing a legal

Representative and Administrators of the estate of

**JOHN VUNDI KASIMU)**.....**APPLICANT**

**VERSUS**

**RICHARD MACHARIA KIMAMO)**.....**RESPONDENT**

**RULING**

1. The application dated 19<sup>th</sup> July, 2018 seeks orders that:

**“1. That the court do extend time for the Applicant to apply to substitute the Plaintiff herein.**

**2. That this suit be revived.**

**3. That the Plaintiff herein be substituted for Francisca Kasimu Munyithya.**

**4. That the Applicant be allowed to amend the plaint in terms of the annexed amended plaint.**

**5. That costs of this application be in the cause.”**

2. It is stated in the grounds and the affidavit in support that the Plaintiff passed away on 27<sup>th</sup> December, 2016 and therefore the suit has abated. That the deceased to whom these proceedings relate was the son to the Applicant. That the death of the son followed by the death of the Plaintiff who was Applicant’s husband left her traumatized and it took time to recover from the loss. That the Applicant thereafter applied for the Grant of Letters of Administration which was also delayed by the court and eventually obtained on 15<sup>th</sup> March, 2018. That an application dated 23<sup>rd</sup> March, 2018 seeking the revival of the suit was struck out, hence the current application.

3. The application is opposed. It is stated in the replying affidavit that no plausible reason has been given and that a similar application was earlier on dismissed by this court. That the application at hand is prejudicial to the Respondent and ought to be dismissed.

4. I have considered the application, the response to the same and the submissions filed by the respective counsel for the parties.

5. The ruling herein dated 17<sup>th</sup> July, 2018 reflects that an earlier application dated 20<sup>th</sup> March, 2018 which was similar to the instant application was struck out as no application had been made for the extension of time for the joinder, *inter alia*, of the Plaintiff’s legal representative (See for example the Court of Appeal’s exposition in **Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others [2017] eKLR**).

6. The Applicant has explained that she was traumatized by the death of two close family members. I find satisfactory reasons have been given for the delay in making the application. Consequently the application is allowed. Costs to the Respondent.

Date, signed and delivered at Nairobi this 26<sup>th</sup> day of Feb., 2020

**B. THURANIRA JADEN**

JUDGE