



**Mumia v Federation of Kenya Employers (Employment and Labour Relations Cause 1571 of 2014) [2024] KEELRC 1098 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1098 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1571 OF 2014**

**NJ ABUODHA, J**

**MAY 9, 2024**

**BETWEEN**

**GLADWELL VURAKWA MUMIA ..... CLAIMANT**

**AND**

**FEDERATION OF KENYA EMPLOYERS ..... RESPONDENT**

**RULING**

1. The Applicant filed application dated 2<sup>nd</sup> October, 2023 under sections 12(3) (i) and (ii), Rules 17, 28 of the *Employment and Labour Relations Court Act* and Article 159 of the *Constitution* 2010 seeking for orders of the court to revive and or reinstate the suit for purposes of substitution of the Claimant and delivery of pending Judgment.
2. The application was supported by the Affidavit of Nixon Caleb Jacoyange the administrator of the estate of the Claimant herein who averred that the judgment in this matter was set to be delivered on or about 19<sup>th</sup> October,2016 after a full hearing on the merits of the case.
3. The Applicant averred that unfortunately the Claimant passed on 14<sup>th</sup> October,2016 about 5 days to the delivery of the judgment. That following the demise of the Claimant the entire family which is diverse and dispersed in various parts of the country and the globe had to regroup to determine the modus of going about administration of her estate as well as persons to be appointed administrators.
4. The Applicant averred that in the process the suit abated by law and he has managed to get the confirmation of grant as the administrator of the Claimant's estate as her husband. That he is desirous of having the suit revived and/or reinstated for purposes of substitution of the Claimant and delivery of Judgment.
5. The Applicant averred that the court has power and authority to hear and determine this application and that if the orders sought are not granted the estate of the Claimant stands to suffer irreparable harm.



6. The Respondent did not file any response to this application which was dispensed of by written submissions.

### **Determination**

7. I have considered the Application filed by the Applicant herein and I proceed to analyse it as follows.
8. It is not in dispute that the Claimant passed on in 14<sup>th</sup> October, 2016 about 5 days before the judgment in this suit was to be delivered. The parties were heard on merit and the suit was ripe for delivery of judgment.
9. I have also perused the grant of the letters of administration to the Applicant herein which was issued in November, 2021 five years after the demise of the Claimant herein and an application seeking reinstatement of the suit in order to substitute the Claimant was made in October 2023 which is two years after issuance of the grant and seven years after the demise of the Claimant herein.
10. Order 24 Rule 3 is the guiding principle in this case which provides as follows: \_

- 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.

11. A proper reading of the above legal position leads me to a conclusion that a party who wishes to revive an abated suit after one year of the demise of the Claimant must first seek an extension of time. This is also supported by case law in the case of *Rebecca Mijide Mungole & another v Kenya Power & Lighting Company Ltd & 2 others* [2017] eKLR where the court of Appeal held as follows:

Speaking generally, by operation of the law, a suit will automatically abate where a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues if no application is made within one year following his death...because the suit will only abate where, within one year of the death of the plaintiff no application is made to cause the legal representative of the deceased plaintiff to be joined in the proceedings, it is imperative and we may add, logical, where the legal representative is not so joined within one year, that an application be made for extension of time to apply for joinder of the deceased plaintiff's legal representative. It is only after the time has been extended that the legal representative can have capacity to apply to be made a party. Order 24 must be construed by reading it as a whole and the sequence in which it is framed must be followed without short circuiting it. The proviso to rule 3(2) to the effect that the court may, for good reason on application, extend the time goes to show that without time being extended, no application for revival or joinder can be made. It is the effluxion of time that causes the suit to abate. It is that time that must, first be extended. Once time has been enlarged, only then can the legal



representative bring an application to be joined in the proceedings. Again, it is only after the legal representative has been joined as a party that he can apply for the revival of the action. In our view there is nothing objectionable to making an omnibus application for all the three prayers. But it is incompetent to seek joinder or revival when the prayer for more time to apply has not been granted.

12. It is now clear that from the above position that the Applicant ought to have sought for extension of time first or in the alternative sought extension of time together with the other prayers. A keen look on the Notice of Motion shows that the Applicant only sought revival of the suit and the other prayers without seeking extension of time after the suit had abated.
13. It is also important to note that the Applicant has approached this Court leisurely with inordinate delay seven years after the demise of the Claimant his wife. The Applicant's explanation of the delay as the husband to the deceased Claimant does not add up. In any case he has not followed up with the right procedure as provided in the law and supported by the case laws. He may well be advised to attempt the correct procedure and hopefully the Court might on merit of the application relook at the matter.
14. For reasons advanced above, the Application is found not merited and is hereby dismissed with no orders as to costs.
15. It is so ordered.

**DATED THIS 9TH DAY OF MAY, 2024**

**DELIVERED THIS 9TH DAY OF MAY, 2024**

**ABUODHA NELSON JORUM**

**JUDGE**

