



**Kumaka v Attorney General (Miscellaneous Application
131 of 2016) [2025] KEELRC 961 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 961 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION 131 OF 2016**

S RADIDO, J

MARCH 27, 2025

**IN THE MATTER OF EMPLOYMENT AND LABOUR RELATIONS COURT NAIROBI CASE
NO. 2212 OF 2012 S.M. CHEGE & 283 OTHERS V THE ATTORNEY GENERAL AND IN
THE MATTER OF SUCCESSION CAUSE NO. 1109 OF 2016 AND IN THE MATTER OF THE
ESTATE OF ALEXANDER KUMAKA NJAU ALIAS ALEX BENSON KUMAKA (DECEASED)**

BETWEEN

BETH NYAMBURA KUMAKA APPLICANT

AND

HON ATTORNEY GENERAL RESPONDENT

RULING

1. The applicant moved the Court on 6 December 2016, seeking orders:
 - i. That this Notice of Motion be certified urgent and be heard ex-parte in the first instance.
 - ii. That the Honourable Court be pleased to substitute Alexander Kumaka Njau alias Alex Benson Kumaka with Beth Nyambura Kumaka the Administrator of the deceased estate.
 - iii. That there be such other orders as the Court deems fair and expedient to grant in the circumstances.
2. The main grounds given in support of the Motion were that Alexander Kumaka Njau was one of the plaintiffs in Cause No. 2212 of 2012, WO1 Samuel Chege Gitau & Ors v Hon Attorney General but he died on 30 November 2015, before the hearing and determination of the Cause, and that the applicant had only been appointed as an Administrator on 8 July 2016.
3. Upon service of the Motion, the Hon Attorney General filed a Notice of Preliminary Objection on 18 October 2017 contending that:



- i. The applicant's application is grossly incompetent, misinformed, misconceived, vexatious and an abuse of the court process and ought to be struck out in limine.
 - ii. That the application is bad in law and unknown in law and the Court lacks jurisdiction to entertain the same as the suit abated in accordance with Order 24 Rule 3(2) and Order 24 Rule 7(1) of the Civil Procedure Rules, 2010.
 - iii. That the applicant has not demonstrated any reasonable and/or justifiable cause to warrant issuance of the orders sought.
4. When the Motion came up for hearing on 20 February 2017, it was adjourned because the applicant who had fixed the date was absent.
 5. The Motion was next mentioned on 10 July 2024 when the Court directed that it be heard on 25 September 2024.
 6. The Court did not sit on 25 September 2024, and the parties were informed through an email sent on 26 September 2024 to appear for the hearing on 28 October 2024.
 7. The applicant did not attend the Court on 28 October 2024, and the Court issued a Notice to Show Cause with a return date of 27 January 2025.
 8. The parties did not appear on 27 January 2025 and the Court issued another Notice to Show Cause with a return date of 11 February 2025.
 9. When the Motion was called on 11 February 2025, none of the parties were present and the Court dismissed the Motion.
 10. Mr Agina for the applicant later appeared and informed the Court that he had filed an affidavit in response to the Notice to Show Cause.
 11. The Court indicated it would give a Ruling today.
 12. The Court has considered the Motion, affidavits and Notice of Preliminary Objection and proceedings in Nairobi Cause No. 2212 of 2012.
 13. The proceedings in Nairobi Cause No. 2212 of 2012 indicate that the Cause was heard and a judgment delivered on 15 April 2016.
 14. Therefore, the applicant must have been aware of the delivery of judgment when she moved this Court on 6 December 2016.
 15. The applicant did not disclose to this Court that the judgment had been delivered.
 16. The instant Motion is anchored partly on Order 24 Rule 7(2) of the Civil Procedure Rules, 2010. The Rule covers the revival of abated suits. The said Rule was wrongly invoked in the circumstances of these proceedings and cannot aid the applicant's case.
 17. In the affidavit in response to the Notice to Show Cause, Mr Agina explained that he was not able to attend this Court on 28 October 2024 because he was before the High Court in Petition No. 108 of 2019, and that he was ready to prosecute the Motion.
 18. That explanation may be so, but it does not detract from the fact that the Motion for substitution should have been filed in the primary file, Nairobi Cause No. 2212 of 2012.
 19. In fact, the CTS system shows that some of the parties filed substitution applications in the primary file.



20. Despite the applicant's explanations, the Motion seeking substitution is fatally defective in that it would serve no legal purpose to vacate the order of 11 February 2025 dismissing the Motion.

Orders

21. The Motion filed in Court on 6 December 2016 stands dismissed with no order on costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIVASHA ON THIS 27TH DAY OF MARCH 2025.

RADIDO STEPHEN, MCIArb

JUDGE

Appearances

For applicant Agina & Associates Advocates

For Respondent Office of the Hon Attorney General

Court Assistant Wangu

