



**Wanyeki & another v Attorney General (Miscellaneous Application
91 of 2016) [2025] KEELRC 977 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 977 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION 91 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. 965 OF 2015

AND

IN THE MATTER OF THE ESTATE OF STEPHEN MWANGI WANYEKI (DECEASED)

BETWEEN

FREDRICK THUO WANYEKI 1ST APPLICANT

GLADYS MUTHONI WANYEKI 2ND APPLICANT

AND

HON ATTORNEY GENERAL RESPONDENT

RULING

1. The applicant moved the Court on 4 August 2016, seeking orders:
 - i. That this Notice of Motion be certified urgent and be heard ex-parte in the first instance.
 - ii. That may the Honourable Court be pleased to substitute Stephen Mwangi Wanyeki with Fredrick Thuo Wanyeki and Gladys Muthoni Wanyeki, the Administrators of the deceased's 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 Stephen Mwangi Wanyeki was one of the plaintiffs in Cause No. 2212 of 2012, WO1 Samuel Chege Gitau & Ors v Hon Attorney General, but he died on 17 November 2007 before the hearing and determination of the Cause and that the applicants had only been appointed as an Administrator on 16 December 2015.
3. On 11 June 2014, the Deputy Registrar directed the parties to appear on 10 July 2024.
4. On this day, the application was fixed for hearing on 25 September 2024.
5. 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.
6. 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.
7. 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.
8. When the Motion was called on 11 February 2025, none of the parties were present, and the Court dismissed the Motion.
9. Mr Agina, for the applicant, later appeared and informed the Court that he had had a technical challenge joining the Court earlier and that he had filed an affidavit in response to the Notice to Show Cause.
10. The Court indicated it would give a Ruling today.
11. The Court has considered the Motion, affidavits and proceedings in Nairobi Cause No. 2212 of 2012.
12. The proceedings in Nairobi Cause No. 2212 of 2012 indicate that the Cause was heard and a judgment delivered on 15 April 2016.
13. Therefore, the applicant must have been aware of the delivery of judgment when she moved this Court on 20 July 2016.
14. The applicant did not disclose to this Court that the judgment had been delivered.
15. 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.
16. 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.
17. 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.
18. In fact, the CTS system shows that some of the parties filed substitution applications in the primary file.
19. 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

20. The Motion filed in Court on 4 August 2016 stands dismissed with no order on costs.

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

Radido Stephen, MCI Arb

Judge

Appearances

For applicant Agina & Associates Advocates

For Respondent Office of the Hon Attorney General

Court Assistant Wangu

