



**Kenya Tertiary and Schools Workers Union v Heltz Driving School (Academy)
(Cause 1610 of 2018) [2024] KEELRC 146 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 146 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1610 OF 2018
L NDOLO, J
FEBRUARY 8, 2024**

**BETWEEN
KENYA TERTIARY AND SCHOOLS WORKERS UNION CLAIMANT
AND
HELTZ DRIVING SCHOOL (ACADEMY) RESPONDENT**

RULING

1. By its Notice of Motion dated 16th June 2023, the Respondent seeks orders under Order 24 Rule 4(3) of the *Civil Procedure Rules*, declaring this suit as having abated on account of the Respondent's death.
2. The Motion is supported by an affidavit sworn by the Respondent's Counsel, Joel M. Kabaiku and is based on the following grounds:
 - a. That the Respondent passed away on 8th August 2021;
 - b. That the cause of action against the Respondent has abated by operation of the law;
 - c. That the application ought to be granted in the interest of equity and justice.
3. The Claimant filed a replying affidavit sworn by Humphrey G. Ojiambo who describes himself as one of the Grievants in the case.
4. Ojiambo depones that there is no nexus between the named Respondent, Heltz Driving School and the deceased. He adds that he is aware that the School is still operational.
5. The Respondent's Motion is brought under Order 24 Rule 4 of the *Civil Procedure Rules* which provides as follows:
 - 4.



- (1) Where one or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant 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 defendant to be made a party and shall proceed with the suit.
 - (2) ...
 - (3) Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.
6. Attached to the affidavit in support of the application is a certificate of death of Ahmed Osman Ayubu Bachani. There is however no document to show any nexus between the named Respondent, Heltz Driving School and the deceased. The Court cannot therefore confirm whether the Respondent is dead, as alleged by Counsel.
 7. Additionally, the averment made by Humprey G. Ojiambo that Heltz Driving School is still operational has not been denied. Moreover, rights and obligations arising from an employment relationship cannot be automatically extinguished by the death of the owner of the business if the business continues to operate.
 8. For the foregoing reasons, I find the Respondent's application to be without merit and proceed to dismiss it with costs in the cause.
 9. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF FEBRUARY 2024

LINNET NDOLO

JUDGE

Appearance:

Miss Njenga for the Claimant

Mr. Kabaiku for the Respondent

