



Ogamba v Steelstone Kenya Limited; Mayaka (Applicant) (Cause 180 of 2017) [2023] KEELRC 213 (KLR) (31 January 2023) (Ruling)

Neutral citation: [2023] KEELRC 213 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 180 OF 2017
J RIKA, J
JANUARY 31, 2023**

BETWEEN

JOASH TENDU OGAMBA CLAIMANT

AND

STEELSTONE KENYA LIMITED RESPONDENT

AND

BEATRICE KWAMBOKA MAYAKA APPLICANT

RULING

1. The claimant passed away on May 31, 2020.
2. The applicant is his widow, and legal representative, having obtained limited grant ad litem, in Nairobi High Court, succession cause Number E2480 of 2021, on January 7, 2022.
3. She states that the claim abated, since the claimant was not substituted, within 1 year of his demise.
4. Through the application dated October 21, 2022, the applicant seeks orders, that: -
 - a. The claim, which has abated, be revived.
 - b. The claimant's name, Joash Tendu Ogamba, is substituted with that of the applicant, Beatrice Kwamboka Mayaka.
 - c. Annexed draft memorandum of claim dated February 4, 2022 be deemed duly filed upon payment of requisite fees.
 - d. Cost in the cause.
5. The application is founded on the claimant's affidavit, sworn on October 21, 2022.



6. The respondent opposes the application through grounds of opposition, dated November 30, 2022. Its position is that the application does not meet the provisions of the law on revival of abated claims; there is no evidence to show that the cause of action survived the claimant; no documents have been provided in support of the claim; the application lacks merit; and it ought to be dismissed with costs.
7. Parties agreed to have the application considered on the strength of their submissions, which were confirmed as filed and served, at the last mention on November 8, 2022.

The Court Finds: -

8. The claimant initiated this claim in 2017, seeking terminal benefits and compensation for unfair termination. He died in 2020, before he could prosecute the claim. It is not disputed that his widow, the applicant herein, has obtained limited grant from the High Court, Nairobi.
9. Unfortunately, the claim abated around May 2021.
10. The claimant filed this application in 2022, about a year, after abatement.
11. Delay was not inordinate, considering she was probably in mourning, and needed some time to move the High Court, to issue her limited grant.
12. Section 24 of the *Employment Act* requires an employer, as soon as practicable, to report the death of an employee to the labour office or district [county] commissioner. Upon proof of capacity as required by law, the legal representative shall be entitled to be paid wages and any other remuneration, within 30 days of submitting proof. Where no Legal representative has claimed the wages or property of the employee, or the employer is in doubt of, or has rejected any claim made, the employer has an obligation to deliver to the labour office or district [county] commissioner, all wages due to the employee at the date of his demise.
13. The claimant was an ex-employee of the respondent at the time of his demise, and the respondent did not have to act in accordance with the above provision. But the above provision suggests that the cause of action, survives the deceased employee, contrary to the submission by the respondent. The employee was claiming certain benefits from the employer, at the time of demise. If he was owed terminal benefits as claimed, they do not become extinguished by virtue of his death. They do not become un-claimable or un-payable. His legal representative must be facilitated in her pursuit, for the benefit of his estate. She must be allowed the opportunity to prove that her husband was owed these benefits by the employer.
14. There was a momentary abatement of the claim, but once the claimant's widow obtained limited grant, within a reasonable period of the claimant's demise, she became capacitated, and there is no reason why the claim should remain abated.
15. The application is allowed.

It Is Ordered:

- a. The application dated October 21, 2022 is allowed as prayed.
- b. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY OF JANUARY 2023

JAMES RIKA



JUDGE

