



**Kiamba v Amazon Motors Limited (Cause 1069 of 2018)
[2023] KEELRC 2322 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2322 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1069 OF 2018
MN NDUMA, J
SEPTEMBER 21, 2023**

BETWEEN

THOMAS KIAMBA CLAIMANT

AND

AMAZON MOTORS LIMITED RESPONDENT

RULING

1. The applicant in the Chamber Summons application dated 13/1/2023 seeks an order in the following terms:-
 1. That the name of Thomas Kiamba as claimant deceased be substituted with Kiamba James Muithya and be added to this suit.
 2. That the costs of the application be in the cause.
2. The application is based on the grounds that the claimant in the present suit is deceased and that the biological son of the deceased Kiamba James Muithya who has been granted the letters of administration Ad Litem of the estate of the above named Thomas Mutua Kiamba who died on 27/9/2021 following a cardiac arrest, be added to the suit.
3. The letters of administration Ad Litem dated 19/7/2022 is attached to the application. That the application to substitute was made after the suit had abated, that is after 1 year following the claimant's demise. That this Court has inherent power to grant leave for the filing of an application to revive the suit.
4. The application is opposed vide replying affidavit of Allan Muturi an Advocate of the High Court in conduct of the defence.



5. The respondent deposes that the applicant has admitted that the suit has abated by operation of the law under Order 24, Rule 3(2) of Civil Procedure Rules since one year has passed on and there exists no competent suit for which the applicant's name can be substituted.
6. That parties are bound by their pleadings. As the applicant has not filed the necessary application for the revival of the suit, the Court do dismiss the instant application to have the Applicant substituted in as a claimant in a non-existent suit.
7. The application for substitution was made on 13/1/2023 about more than one year and five (5) months since the death of the claimant which occurred on 27/9/2021.
8. In terms of Order 24, rule 1, the death of the claimant did not cause the suit to abate since the cause of action survived the deceased or continues.
9. This application has however been brought in terms of Order 24 rule 3(1) when the suit has abated in terms of Order 24 rule 3(2).
10. This Court has discretion to extend the time within which substitution of the deceased party is made for good reason on application.
11. Letters of administration in this matter Ad litem were granted to the applicant on 19/7/2022. The applicant made this application about six (6) months from the date he was granted the said letters of administration. The applicant states in the further affidavit that the delay to apply for substitution was caused by his inadvertence to inform his advocates of the claimant's demise in good time. That it is in the interest of justice that the matter be heard on the merits. That no prejudice will be occasioned to the respondent should the application for substitution be heard on the merits.
12. Order 24 rule 1 Sub-rule 2 provides that:-

“Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned. Provided the court may, for good reason on application, extend the time.

Order 24 rule 3 (1) provides that ‘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.’”
13. The import of abatement under Order 24 rule 7 is that no fresh suit shall be brought on the same cause of action. But under sub-rule (2) the plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the trustee or official receiver in the case of a bankrupt plaintiff may apply for an order to revive a suit which has abated or to set aside an order of dismissal; and, if it is proved that he was prevented by any sufficient cause from continuing the suit, the court shall revive the suit or set aside such dismissal upon such terms as to costs or otherwise as it thinks fit.
14. In Julius Gichobi Githaiga and Another -vs- Phillis Wanjiku Njuki (Sued as the Administrator of the Estate of Jonathan Njuki Githaiga (Deceased) the Court held that:-

‘Order 24 Rule 7 (2) CPR provides for the revival of a suit which has abated. Unless an application for revival of this suit is sought and obtained, it will be highly impossible to substitute the proposed defendant in a suit that is non-existent. I find the application for



substitution without first reviving the abated suit frivolous. With a heavy heart, the said application dated 17th December 2019 is hereby struck out with costs in the cause

15. The Court has carefully considered the deposition by the parties including the case of Julius Gichobi Githaiga and Another -vs- Phillis Wanjiku Njuki (sued as the Administrator of the Estate of Jonathan Njuki Githaiga (Deceased) supra.
16. It is common cause that the application to substitute was made after the suit had abated, that is 1 year following the claimant's demise. This Court has the discretion in light of the above to extend the time within which substitution of a claimant under Order 24, rule 3(1) can be made. The Court, however, cannot do this of its own motion without an application being made to so revive the subject suit or claim. The court cannot grant substitution on a suit which presently does not exist without first reviving the abated suit. It follows that the application as filed is defective and is regrettably dismissed with no order as to costs.
17. It is so ordered.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 21ST DAY OF SEPTEMBER, 2023.

MATHEWS N. NDUMA

JUDGE

