



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Muhatia v Lions School (Cause E027 of 2021)
[2023] KEELRC 2141 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2141 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E027 OF 2021
MA ONYANGO, J
SEPTEMBER 21, 2023**

BETWEEN

GRACE MUHATIA CLAIMANT

AND

LIONS SCHOOL RESPONDENT

RULING

1. Vide an application dated March 29, 2023 the Claimant seeks the following orders: -
 - a. That the Honourable court be pleased to admit and substitute the name of the claimant herein Grace Muhadia (now deceased) with the name of the applicant Absolom Agalomba being the personal and legal representative of the claimant.
 - b. That cost of this Application be provided for.
2. The Application is premised on grounds that:
 - a. That the Applicant/Plaintiff is the lawful husband to Grace Muhadia the claimant in this suit herein.
 - b. That the claimant, now deceased had instituted this suit seeking to be paid her rightful dues owed to her by the respondent.
 - c. That in the course of courts proceedings, Grace Muhadia passed away on June 17, 2022 necessitating this application
 - d. Leave is required for the applicant to be substituted as a claimant in order to continue with the prosecution of the suit.
 - e. That the applicant has been issued a limited grant of letters of administration ad litem.



- f. That the applicant has approached this court with clean hands and without delay.
3. The application is further supported by the affidavit of Absolom Agalomba, the applicant in which he reiterates the grounds on the face of the application.
 4. The Applicant has attached copies of the Certificate of Death of Grace Muhadia, the Claimant (Deceased) which shows that she died on June 17, 2022. (See annexure AA2 of the supporting affidavit). He has further attached a letter from the Office of the Chief, Kongoni Location, Likuyani Sub County to the effect that the applicant is the widower of the deceased Claimant. (See annexure AA1 of the supporting affidavit).
 5. The Applicant further attached a copy of the Limited Grant of Letters of Administration Ad Litem to the Estate of Grace Muhadia, (the deceased), as annexure AA3 to the application.
 6. The Respondent opposes the application and has filed a replying affidavit of Anne Halwenge Odwa, Counsel for the Respondent in which she in view of the fact that it has not been determined that the deceased was unlawfully dismissed from employment as alleged in which she deposes that in the Memorandum of Claim, her claim cannot survive her as the issues in the claim arise from an employment contract which only the deceased Claimant can answer.
 7. The application was urged orally in court on July 4, 2023. The parties by and large reiterated their positions as pleaded in their respective pleadings.
 8. Counsel for the Applicant further submitted that the claim survives the Claimant and that the application was made within the year and has not lapsed, relying on the decision in [Kevina Akinyi Wepukbulu v KPLC](#) [2021] eKLR where the court granted similar orders as those sought in the instant application.
 9. Order 24 of the [Civil Procedure Rules](#) provides for substitution of a deceased plaintiff as follows:
[Order 24, rule 1] No abatement by pay's death if right survives.
 1. The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives or continues.
 2. [Order 24, rule 2] Procedure where one several plaintiffs and right to sue survives.
 2. Where there are more plaintiffs or defendants than one, and any one of them dies, and where the cause of action survives or continues to the surviving plaintiff or plaintiffs alone or against the surviving defendant or defendants alone, the court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.
 3. [Order 24, rule 3.] Procedure in case of death of one of several plaintiffs' or of sole plaintiff. 3. (1) 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.



10. The arguments by the Respondent over proof of the case are matters to be determined at the hearing of the case. The fact that a party substituted may not be able to prove the case of the deceased party is not a relevant issue in the determination of an application for substitution of a deceased party in a suit. The only relevant factor in substitution of a Claimant or Plaintiff is whether or not the cause of action survives the deceased Claimant or Plaintiff.
11. The Respondent did not raise any issue as to whether or not the cause of action survives the deceased.
12. Considering the said issue in the case of Kevina Akinyi Wepukhulu (supra) the court observed as follows:

“1. The legal maxim *actio personalis moritur cum persona* provides that a personal cause of action dies with a person. Section 2 (1) of the *Law Reform Act* incorporates the said maxim and provides as follows:

“Subject to the provisions of this section, on the death of any person after the commencement of this Act, all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.”
13. The court further held:
 13. In my view the claim before the court is an employment claim seeking declaration of rights, damages and terminal dues which essentially should survive an employee under section 2 (1) of the *Law Reform Act* for reason that under section 24 (2) of the *Employment Act* a legal representative is entitled to be paid wages and any remuneration owed to the deceased employee.
14. I find that the Respondent has not adduced any valid grounds as to why the application should not be granted. Consequently, the application succeeds and I make the following orders:
 - i. The name of the Claimant herein Grace Muhadia (deceased) be and is hereby substituted with the name of the Applicant Absolom Agalomba being the personal and legal representative of the Claimant:-
 - ii. The applicant is directed to immediately and not later than 30 days, file an amended claim to reflect the change of the Claimant from the deceased to the Personal and Legal representation.
 - iii. Costs of the application shall be in the cause.

DATED, DELIVERED VIRTUALLY AT ELDORET THIS 21ST DAY OF SEPTEMBER, 2023.

M. ONYANGO

JUDGE

2

ELD ELRC E27 OF 2021 RULING

