



Oyole (Legal Representative of the Estate of Rispa Awinja Oyole) v Farmline East Africa Limited (Cause 1930 of 2015) [2022] KEELRC 1257 (KLR) (8 July 2022) (Ruling)

Neutral citation: [2022] KEELRC 1257 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1930 OF 2015**

SC RUTTO, J

JULY 8, 2022

BETWEEN

DORICUS OWILLA OYOLE (LEGAL REPRESENTATIVE OF THE ESTATE OF RISP AWINJA OYOLE) APPLICANT

AND

FARMLINE EAST AFRICA LIMITED RESPONDENT

RULING

1. Before me for determination is a Notice of Motion Application dated March 7, 2022, which seeks the following orders;
 1. That this Honourable Court be pleased to extend time for the legal representative of the estate of Rispa Awinja to be substituted as a claimant.
 2. That this Honourable Court be pleased to substitute the Applicant/legal representative as the claimant herein.
 3. That this Honourable Court be pleased (sic) revive this employment cause to enable it proceed to a merit hearing.
 4. That costs of this Application to be in the cause.
2. The Application is premised on the grounds set out in its body and on the Supporting Affidavit of Ms. Doricus Owilla Oyole, sworn on March 7, 2022. Briefly, the grounds are that;
 - i. The late Ripsa Awinja had instituted a claim against her employer, Farmline East Africa in ELRC No. 1930 of 2015 seeking damages for unfair termination.
 - ii. While awaiting a hearing, the claimant died on February 17, 2021 while residing in Vihiga.



- iii. It took a while for the Applicant to apply to be substituted in this cause whereupon the claim lapsed within a year of the death of Rispa Awinja Oyole.
 - iv. The Applicant has since applied for and been granted letters of administration ad litem for purposes of continuing the claim on behalf of the estate of the deceased claimant.
3. The Respondent did not file any response to the Application.
 4. The Application was canvassed by written submissions, with the Applicant arguing that the suit survived the deceased claimant. That there was good reason to extend time. That the application for substitution was not inordinate and sufficient explanation for the same had been given.
 5. Evidently, the main issue falling for the court's determination is whether the Application is merited, that is whether the Court can extend time and allow for the substitution of the deceased claimant.
 6. Section 2 (1) of the Law Reform Act is key in the determination of this issue and I will reproduce the same thus: -

“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.”
 7. From the above provision, it is clear that employment matters are not excluded from application hence are deemed to survive the claimant.
 8. Further, Order 24 rule 1 and 3 (2) of the Civil Procedure Rules states as follows:-
 - “(1) The death of a Plaintiff or Defendant shall not cause the suit to abate if the cause of action survives or continues.
 - (2) Where within one year no application is made under subrule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff.

Provided the court may, for good reason on application, extend the time.”
 9. The import of the foregoing provision is that the death of a plaintiff does not cause the suit to abate if the cause of action survives. Be that as it may, by operation of the law, a suit will automatically abate where a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues if no application is made within one year following his or her death. In this regard, the Court is granted power to extend time upon application. Such application ought to be based on “good reason”.
 10. The question thus is whether there was any “good reason” advanced by the Applicant to warrant the exercise of the discretion on whether or not to extend time?
 11. The term “good reason”, which may also be interpreted to mean “sufficient or good cause”, was defined by the Court of Appeal in the case of *The Hon Attorney General vs the Law Society of Kenya & Another* Civil Appeal (Application) No. 133 of 2011 to mean:

“Sufficient cause or good cause in law means: -



The burden placed on a litigant (usually by court rule or order) to show why a request should be granted or an action excused. See Black’s Law Dictionary, 9th Edition, page 251. Sufficient cause must therefore be rational, plausible, logical, convincing, reasonable and truthful. It should not be an explanation that leaves doubt in a Judges mind. The explanation should not leave unexplained gaps in the sequence of events”.

12. The Applicant has stated that she experienced difficulty in getting the death certificate of the deceased claimant hence delayed her application for the grant of letters of administration ad litem. I find this reason to be plausible and convincing.
13. It is also notable that the deceased claimant passed away on February 17, 2021 and the letters of administration *ad litem* issued on March 3, 2022. The instant Application was made on March 7, 2022. Hence the delay in substitution was for slightly one month.
14. In the circumstances, I find that the Applicant’s Notice of Motion dated March 7, 2022 is well merited and the orders sought therein are granted and the deceased claimant shall be substituted within the next 30 days from today, failure to which the suit shall stand abated with no further reference to the Court.
15. Costs of this application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JULY, 2022.

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STELLA RUTTO

JUDGE

Appearance:

Mr. Muchiri for the Claimant/Applicant

No appearance for the Respondent

Court Assistant Barille Sora

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

