



**Songole v Rural Electrification Authority (Cause 1324 of 2011)
[2022] KEELRC 13183 (KLR) (10 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13183 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1324 OF 2011
L NDOLO, J
NOVEMBER 10, 2022**

CLAIM STRUCK OUT; EACH PARTY TO BEAR OWN COSTS.

BETWEEN

RONALD KISUZA SONGOLE CLAIMANT

AND

RURAL ELECTRIFICATION AUTHORITY RESPONDENT

RULING

1. What falls for determination is a notice of motion dated February 21, 2022 by which the respondent seeks dismissal of the claimant's claim for failure to substitute the deceased claimant within the stipulated one (1) year period.
2. The motion is supported by an affidavit sworn by the respondent's Chief Legal Officer, Pauline Sewe and is premised on the following grounds:
 - a. Pursuant to a memorandum of claim dated August 4, 2011 and amended on January 9, 2013 and further amended on October 13, 2017, the claimant instituted a claim against the respondent, seeking inter alia, a declaration that the action of the Respondent to send him on compulsory leave was illegal, unlawful, unfair and malicious;
 - b. The claim was consolidated with Cause No 1326 of 2011 where the respondent had been sued by one Moses Mutai Kibiwott hence Cause No 1326 of 2011 was settled;
 - c. On January 15, 2018, while the claim herein was still pending hearing and final determination, the Claimant Ronald Kisuza Songole passed away;
 - d. When the matter was last in court on April 11, 2018, the advocate for the claimant informed the court that the claimant was deceased and sought time to apply for substitution of the deceased claimant with his legal representative. The matter was stood over indefinitely;



- e. As per the mandatory provisions of order 42 rule 3(2) of the *Civil Procedure Rules*, an application for substitution has to be made within one year for the court to cause the legal representative of the claimant to be made a party;
 - f. The effect of the failure to substitute the deceased Claimant within the stipulated one year is to render the claim abated;
 - g. Since the demise of the claimant on January 15, 2018, no application has been made for the last four (4) years to substitute the deceased claimant with his legal representative and hence the claim has abated;
 - h. The provisions of the *Civil Procedure Rules* on the substitution of a deceased party are mandatory and quite clear and non-compliance with the said Rules is fatal;
 - i. No sufficient cause or reason has been brought to the attention of the court as to why no application for substitution was made within one year of the demise of the claimant;
 - j. The pendency of this suit continues to unlawfully and unjustly prejudice the respondent;
 - k. It is in the interest of justice that litigation must come to an end;
 - l. In light of the foregoing, it is only fair and just that this application is allowed.
3. No response was filed on behalf of the claimant.
4. The respondent's motion is brought under rule 17(1) of the *Employment and Labour Relations Court (Procedure) Rules* and order 24 rule 3(2) of the *Civil Procedure Rules*.
5. A perusal of the court records reveals the following:
- a. That the matter opened for trial on October 12, 2017 when I began taking the claimant's testimony;
 - b. That in the course of proceedings, the claimant made an application to amend his claim, which application I allowed and directed the claimant to file his amended claim within seven days. I stood down the claimant until February 14, 2018;
 - c. In the meantime, I left Nairobi Station and the matter was taken over by ON Makau, J;
 - d. At the court appearance on February 14, 2018, the court was notified that the claimant had passed away and on April 11, 2018, counsel on record for the claimant asked for time to substitute the deceased claimant with a legal representative;
 - e. The matter was stood over generally and there was no activity on the file until the filing of the respondent's application.
6. Order 24 rule 3 provides as follows:
- 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 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.
 - (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.

7. It is on record that the claimant passed away on January 15, 2018 and no application for substitution has been made.
8. The claim has therefore abated by operation of law and is thus struck out.
9. Each party will bear their own costs.
10. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2022

LINNET NDOLO

JUDGE

Appearance:

Mr Obok for the respondent

No appearance for the respondent

