



IN THE REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

ELRC. CAUSE NO. 1053 OF 2015

KENYA ENGINEERING WORKERS UNION.....CLAIMANT

-VERSUS-

NAPRO INDUSTRIES LIMITED.....RESPONDENT

RULING

1. The application before me is the Claimant's Notice of Motion dated 21.1.2020 seeking the following orders:

(a) That the court be pleased to substitute Hellen Nduku Mbithi Nyilu. The Administrator of the deceased's estate.

(b) Any other order the court deems fit.

2. The application is supported by the affidavit sworn by Ms.Hellen Nduku Mbithi Nyilu on 29.1.2020 and it is opposed by the Respondent vide the Grounds of Opposition filed on 10.2.2020.

3. The Claimant's case is that Ms. Hellen Nduku is the widow of Boniface Mbithi Nyilu who died on 19.1.2014; that on 28.11.2019, she obtained a Limited Grant Of Letters Of Administration from the deceased estate in order to pursue compensation from his employer who is the Respondent in ELRC Cause No. 1053 of 2015. The Claimant prayed for the order sought because the widow has now the capacity to pursue the suit.

4. The Respondent opposed the application on ground that the suit is incompetent *ab initio* because it was filed by the Claimant without any capacity or *locus standi*. She relied on several precedents to urge that the application and indeed the suit are incompetent.

5. I have carefully considered the material presented to the court by the parties. The issue for determination are:

(a) Whether the application is incompetent

(b) Whether the application has merits

Incompetent Motion

6. It is common ground that the late Boniface Mbithi Nyilu died on 19th January, 2014 in a road accident. It is also a fact that the suit was filed on 16.6.2015 by the Claimant union without any Letter of Administration to represent the deceased's estate. It is also a fact that the deceased's widow obtained Grant of Administration on 28.11.2019 and now wants to substitute the union in the suit.

7. Having considered the facts of the case and the application before me, I must agree with the Respondent that the suit is incompetent *ab initio* because it was filed by a person without the legal capacity to sue for want of a Grant of Letters of Administration. It follows that even the application to substitute the Claimant does not hold water because there is no competent suit for her to take over.

8. It is a well settled principle of law that any suit filed on behalf of a deceased person without first obtaining Letters of Administration is incompetent and it cannot see the light of the day. Consequently, I find and hold that application herein is incompetent because the suit is also incompetent. In the end, I reject the application and proceed to dismiss it for the reasons stated above. Each party to bear its own costs.

Dated, signed and delivered at Nairobi this 5th day of February, 2021.

ONESMUS N. MAKAU

JUDGE

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 April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28(3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE