



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 205 OF 2018

CAREY FRANCIS ONYANGO.....CLAIMANT

VERSUS

MASENO UNIVERSITY.....RESPONDENT

AND

ELIZABETH OPITO AWINO RAPEMO

FLORENCE AKEYO AWINO.....APPLICANTS

RULING

1. For determination is a Motion dated 21 November 2019 by Elizabeth Opiyo Awino Rapemo and Florence Akeyo Awino (the applicants) seeking orders:

1. THAT the Honourable Court be pleased to reinstate and/or revive the Claimant's cause.
2. THAT the Honourable Court be pleased to enlarge the time within which to substitute the deceased Claimant.
3. THAT the Honourable Court be pleased to grant leave for the Claimant to be substituted by Elizabeth Opiyo Awino Rapemo and Florence Akeyo Awino.
5. THAT costs of the application be provided for.

2. The Respondent filed Grounds of Opposition on 29 November 2019.

3. When the Motion was placed before the Court on 13 February 2020, the Respondent sought more time to file a replying affidavit. The replying affidavit was filed on 26 February 2020.

4. The applicant filed submissions on 26 June 2020. The Respondent had filed its submissions on 26 February 2020.

5. The Court has considered the application, affidavits and submissions.

6. The Claimant in this Cause died on 28 June 2018.

7. Under Order 24 Rule 1 of the Civil Procedure Rules, a suit does not abate merely because the Claimant has died. Such is the scenario where the cause of action survives.

8. To continue with the suit, a legal representative of the deceased should move the Court within 1-year to be made a party. Otherwise, the suit abates.

9. However, order 24 Rule 2 of the Civil Procedure Rules gives the Court the discretion to extend the time to make the legal representative a party to the suit.

10. The applicants' herein filed their application outside the prescribed 1-year, and the explanation given was that letters of administration were only granted on 12 July 2019.

11. The grant of letters of administration after the Court has been moved is ordinarily out of the control of the Petitioners. It is within the public knowledge that gazetting of the Petition also takes time. The gazetting authority is not under the direction or supervision of the judiciary or the parties.

12. The Court is satisfied that this is a suitable case to exercise its discretion in favour of the applicants in order to do justice.

13. The Motion dated 21 January 2019 is allowed, and the applicants are directed to file and serve an amended Statement of Claim within the next 21 days.

14. Costs in the cause.

Delivered through Microsoft teams, dated and signed in Nairobi on this 31st day of March 2021.

Radido Stephen, MCI Arb

Judge

Appearances

For applicants Orego & Odhiambo Advocates

For Respondent Owiti, Otieno & Ragot Advocates

Court Assistant Chrispo Aura