



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 59 OF 2019

FLORENCE WAIRIMU NDUNGU.....CLAIMANT

VERSUS

COUNTY GOVERNMENT OF LAMU.....1ST RESPONDENT

GOVERNOR LAMU COUNTY.....2ND RESPONDENT

AND

BENSON MWANIKI KITHEKA.....1ST APPLICANT

CHRISTINE MWIKALI KITHEKA.....2ND APPLICANT

RULING

1. The Application before me is a Notice of Motion dated 24/6/2021 and brought under order 24 Rule 2 of the Civil Procedure Rules and Rule 17(3) of the Employment and Labour Relations Court (Procedure) Rules 2016. The Applicants are Benson Mwaniki Kitheka and Christine Mwikali Kitheka and the orders sought are as follows:-

- a) That service of the Application be dispensed with at the first instance.
- b) That an order do issue substituting Benson Mwaniki kitheka and Christine Mwikali Kitheka, the administrators of the estate of the late Florence Wairimu Ndungu (deceased) as the claimants in the lieu (sic) of the late Florence Wairimu Ndungu, the deceased herein.
- c) That the claim be amended accordingly to reflect the substitution of the deceased claimant.
- d) That costs be borne by the Respondents.

2. General grounds upon which the application is predicated are set out on the face of the application, which is based on a supporting affidavit of Benson Mwaniki shown to have been sworn on 24/6/2021.

3. The applicants have deponed, *inter alia*, that:-

- a) They are the legal representatives (administrators) of the Estate of Florence Wairimu Ndungu by dint of Letters of Administration given in Mpeketoni E007 of 2021 (sic).
- b) The deceased filed the cause herein over her dues with the County Government of Lamu but died before the same could be heard.
- c) The Claimant died on 30/8/2020.
- d) That the suit survives the deceased.

4. The Applicants have exhibited copies of a death certificate and a grant of letters of administration intestate. The grant of letters of administration intestate is shown to have been issued by the Subordinate Court through the Registry at Mpeketoni on 27/5/2021.

5. The Application is not opposed as the Respondents did not file any documents in opposition thereof. The Application is shown to have been served on the Respondents on 21/7/2021. There is on record an Affidavit of Service sworn by one Joseph O. Ochieng on 23/7/2021 and filed in court on 26/7/2021. The Respondents entered appearance on 26/7/2021 and have so far not filed any other document.

6. The Claimant, Florence Wairimu Ndungu (deceased) is said to have died on 30/8/2020. The Application herein was filed on 14/7/2021. This was within one (1) of the Claimant's death. The Application was thus filed within the time prescribed under Order 24 Rule 3(2) of the Civil Procedure Rules.

7. The Application is merited, and I allow the same in the following terms:-

a) The deceased Claimant, Florence Wairimu Ndungu who died on 30/8/2020, is hereby substituted with Benson Mwaniki Kitheka, and Christine Mwikali kitheka, her personal representatives and administrators of her estate.

b) The Applicants, Benson Mwaniki Kitheka and Christine Mwikali Kitheka shall within twenty one (21) days file and serve an amended Memorandum of Claim reflecting their character in the proceedings herein as personal representatives of Florence Wairimu Ndungu.

c) The claim shall be mentioned in court on 18/10/2021 for further directions.

d) The applicants shall serve a mention notice on the Respondents.

e) Costs of the Application shall be in the cause.

8. It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 24TH DAY of SEPTEMBER 2021

AGNES M.K. NZEI

JUDGE

ORDER

In view of restrictions on physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

AGNES M.K. NZEI

JUDGE

Appearance:

Miss Njoma for the Claimant

No Appearance for the Respondent