



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 71 OF 2009**

**KENYA LOCAL GOVERNMENT WORKERS UNION.....CLAIMANT**

**VERSUS**

**KANGUNDO TOWN COUNCIL.....RESPONDENT**

**RULING**

1. The Claimants/Applicants filed a Notice of Motion Application dated 28<sup>th</sup> July 2021 seeking to be heard for orders:

- i. THAT leave be granted to the firm of Owino & Company Advocates to come on record for the Applicants (hereinafter "Claimants").
- ii. THAT Kenya Local Government Workers' Union be substituted with Florence Mbula Ngila and Alfonce Muli Kimeu as Claimants in this Cause.
- iii. THAT the Town Council of Kangundo be substituted with County Government of Machakos as the Respondent in this Cause.
- iv. THAT costs of this application be provided for.

2. The Application is premised on the grounds that Kenya Local Government Workers' Union filed this claim on behalf of Alfonce Muli Kimeu and Florence Mbula Ngila and this Court delivered Judgement on 20<sup>th</sup> July 2011 in favour of the two aforementioned Greivants, but which judgement is yet to be executed. The application asserts that the Kenya Local Government Workers' Union has since changed to County Government Workers Union while the defunct Town Council of Kangundo has been subsumed into County Government of Machakos and its functions and liabilities taken over by that County accordingly. The Applicants assert that they are desirous of executing the Judgement which was delivered more than 10 years ago and have appointed the firm of Owino & Company Advocates to represent them in that regard. Further, that it is only just and fair that the true Claimants who have a judgement in their favour be permitted to realize the fruits of the judgement by way of execution through representation of their choice. The Application is supported by an affidavit sworn by Florence Mbula Ngila with authority from Alfonce Muli Kimeu as per an annexed Letter of Authority. She asserts the grounds of the application depones that it is in the interest of justice that the parties in the suit be substituted to facilitate the execution of the judgment. There was no response to the Application.

3. The application is made over 11 years since the delivery of judgment and as such is caught up by the doctrine of laches. The Latin maxim *vigilantibus non dormientibus aequitas subvenit* (which means **equity aids the vigilant and not the indolent**) squarely applies to this case. The Claimant has inordinately delayed in asserting its rights and because of this delay the Claimant is no longer entitled to bring an equitable claim against the Respondent in respect of the judgment of this Court. Having let the matter lie with no action for over 10 years the Court will not rouse the Respondent from their well-deserved slumber. Application is dismissed and since the Respondent did not take any action there is no order on costs against the Applicants.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF NOVEMBER 2021**

**NZIOKI WA MAKAU**

**JUDGE**