



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 198 OF 2015.

(Before Hon. Justice Mathews N. Nduma)

SAMUEL OCHIENG MUGA.....CLAIMMANT

VERSUS

TRANSMARA SUGAR COMPANY.....RESPONDENT

RULING

1. The application dated 7th February 2019 seeks the following orders:

(a) That the matter be certified as urgent and be heard exparte in the first instance.

(b) That the Court be pleased to substitute ESTHER ANYANGO OCHIENG' to be the Claimant in place of SAMUEL OCHIENG' MUGA who is the Deceased.

(c) That the Court be pleased to grant leave for KANYANGI & COMPANY ADVOCATES to come on record for Claimant/Applicant in place of W.O OCHUKA & COMPANY ADVOCATES.

(d) That the Court do order the entire decretal sum to be paid to the Claimant/Applicant or in the alternative the same to be deposited in a joint interest earning account in an approved financial institution in the names of KANYANGI & COMPANY ADVOCATES and MURIMI NDUMIA BANGO & MUCHELA ADVOCATES.

(e) That the Court do order a commensurate amount from the decretal sum to be paid towards the upkeep of the claimant and the other Dependents.

(f) That the Court do grant other/any orders that will serve the ends of justice in this case.

2. The application is based on grounds set out in the notice of motion to wit that the claimant passed away on 14th December 2017 and the widow Esther Anyango Ochieng has taken out *Adlitem* letters and has appointed Kanyangi and Company Advocates to take over the matter and conduct it on her behalf.

3. The application is opposed vide a replying affidavit of George N. Karanja, Advocate in conduct of the matter for the respondent. The counsel deposes that there is a pending Appeal in this matter and the decretal amount was deposited in a joint account as stipulated in the consent orders recorded in court.

4. What is most significant is that the firm on record for the deceased claimant W.O. Ochuke and Company Advocates have filed a counter application dated 11th March 2019 on the even date, which application is supported by an affidavit of Esther Anyango Ochieng, the wife of the deceased claimant.

5. The said Esther Anyango Ochieng states categorically that she has no intention to and has not instructed the firm of Kanyangi and Company Advocates to take over the suit from the firm of W.O Ochuke and Company Advocates. Indeed on 13th March 2019, when the application to take over the matter was argued by the advocates, Esther Anyango Ochieng was in court and clearly wished that the advocates on record continue to conduct the matter on behalf of the Estate of the late husband.

6. The prayer to have Esther Anyango Ochieng substitute the deceased claimant in the matter was not opposed by either party and same was granted.

7. Accordingly the notice of motion application dated 7th February 2019 seeking Kanyangi and Company Advocates to replace W.O Ochuka and Company Advocates as the advocates on record in the estate of the claimant is dismissed with no order as to costs.

8. Esther Anyango Ochieng the wife of the deceased claimant to substitute the deceased claimant in the matter.

Ruling Dated, Signed and delivered this 2nd day of May, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Kanyangi Applicant advocate.

Mr. Lugano for Respondent Company

Mr. Ochuka for the claimant

Chrispo: Court clerk