



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 483 2018**

**(Before Hon. Justice Hellen S. Wasilwa on 16<sup>th</sup> September, 2019)**

**JOHANA GATUNE CHEGE ..... CLAIMANT**

**VERSUS**

**DELTA GUARDS LIMITED .....RESPONDENT**

**RULING**

1. The Application before Court is the Notice of Motion Application dated 11<sup>th</sup> February, 2019 and is brought under Section 1A, 1B and 3A of the Civil Procedure Act, Cap 21, Order 22 Rule 51 (2) of the Civil Procedure Rules, 2010 seeking Orders **THAT**:-

1. ***This Honourable Court be pleased to strike out the Statement of Claim dated 26<sup>th</sup> March, 2018 as against the Respondent.***
2. ***This Honourable Court be pleased to dismiss the Claimant's claim as against the Respondent.***
3. ***The costs of this Application and of the cause be borne by the Claimant.***

2. The Application which is supported by the Affidavit of one M.M. MUKURI is premised on the following grounds:-

- a) ***THAT the Claimant is deceased.***
- b) ***THAT the Claim was filed after the death of the Claimant.***
- c) ***THAT the Claimant passed on 19<sup>th</sup> March, 2018.***

3. The Application was also supported by the Supporting Affidavit of **MUNGAI M. MUKURI** sworn on 11<sup>th</sup> February, 2019, in which he reiterates the averments made in the Notice of Motion Application.

4. The Claimant in response to the Application filed a Replying Affidavit sworn by **MILDRED K. GAKOI**, counsel on record for the Claimant, on 20<sup>th</sup> February, 2019 and filed in Court on even date, in which she avers that the instant Application is frivolous, vexatious and abuse of the Court process and ought to be dismissed with Costs to the Claimant.

5. She further avers that the Claimant instructed the firm to institute the Claim on 3<sup>rd</sup> November, 2017, from which instructions the instant Claim was filed on 9<sup>th</sup> April, 2018 together with all enabling documents.

6. The Claimant contends that the Respondent/Applicant has failed to attach a copy of the death certificate as proof of the Claimant's death and can therefore not pray for the Claim to be dismissed on the basis of the alleged death of the Claimant.

7. The Claimant further contends that if indeed the Claimant was deceased, the suit would only abate after a year of his demise and no application for substitution of parties filed in Court in accordance with Order 24 Rule 3 (2) of the Civil Procedure Rules, 2010. Counsel further states that she is in the process of ascertaining whether or not the Claimant is indeed deceased and would put in such an Application if need be.

8. In Conclusion, the Claimant urges this Honourable Court to dismiss the instant Application with costs to the Claimant.

9. The Respondent/Applicant filed a Further Affidavit deponed by MUNGAI M. MUKURI on 2<sup>nd</sup> April, 2019 and filed in Court on 3<sup>rd</sup> April, 2019, in which he urges this Honourable Court to strike out the Replying Affidavit sworn on 20<sup>th</sup> February, 2019 as the same is a sham, vexatious, frivolous and an abuse to the Court process.

10. He further states that he had requested for a copy of the Death Certificate from the Registrar of births and death and his request was declined on account of him not being a family member of the Claimant. He however attached a copy of the funeral program of the deceased (the Claimant) issued to staff members of the Respondent Company.

11. The Respondent contends that the Claimant cannot be substituted as the Claim is not properly instituted and that the same ought to be dismissed in the first instance.

12. I have examined all the averments herein. From the annexed programme (DGL), the Claimant herein was buried on 27<sup>th</sup> March 2018 but this claim was filed on 9.4.2018 after the said death.

13. In the circumstances of this case, a deceased would not have instructed the filing of this case on 9.4.2019. Only the administrator of the Claimant's estate is free to file a claim after the death.

14. I therefore find the application to strike out this claim valid. I allow it and accordingly strike out this claim.

15. Costs be borne by each Party.

**Dated and delivered in open Court this 16<sup>th</sup> day of September, 2019.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Parties