



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 296 OF 2016**

**(BEFORE HON. JUSTICE MATHEWS N. NDUMA)**

**HOTTENSIAH WAMBUI IGOGO.....PLAINTIFF/APPLICANT**

**VERSUS**

**GRACE KAISO (Sued on behalf of the Council of Anglican Provinces**

**of Africa).....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**ARCHBISHOP BENJAMIN NZIMBI.....2<sup>ND</sup>DEFENDANT/RESP.**

**RULING**

1. It is a common cause that the Plaintiff died on 10<sup>th</sup> October, 2011. It is also not in dispute that Letters of Administration intestate of all the estate of the deceased plaintiff was granted by the High Court on 2<sup>nd</sup> October, 2012. The applicant seeks extension of time within which to substitute the deceased plaintiff with the Administrators Perminus Ngugi Igogo, Florence Nyanjau Igogo and Grace Wambui Igogo.
2. This application was filed on 24<sup>th</sup> July 2014, about two years from the date of grant of the Letters of Administration.
3. The application is opposed on the grounds that since the 1<sup>st</sup> defendant entered appearance on the matter on 18<sup>th</sup> August, 2004 and filed defence on 7<sup>th</sup> December, 2004 no step was taken by the deceased in this matter until he died on 10<sup>th</sup> October, 2011.
4. That even upon death of the deceased, it has taken two years and nine (9) months to apply for substitution.

**Determination**

5. Order 24 Rule 3(1) of the Civil Procedure Rules 2010 requires that an application for substitution of the deceased plaintiff be made within one (1) year after the death of the Plaintiff.
6. In terms of sub-Rule (2), “*where within one year no application is made under sub-rule (1) the suit shall abate so far as the deceased plaintiff is concerned and, on the application of the Defendant the court may award to him costs which he may have incurred in defending the suit to be recovered from the estate of the deceased plaintiff; provided the court may, for good reason on application, extend the time*”
7. The applicant has not provided any good reason why the application for substitution should be granted more than two years and nine months upon the demise of the Plaintiff. Furthermore, it would appear that deceased had lost interest in this suit having not taken action to prosecute it for more than seven (7) years before his death.
8. The court is inclined not to exercise its discretion in favour of the applicants in the circumstances of this case. Accordingly, the suit has abated and is dismissed with no order as to costs.

**Dated and Signed in Kisumu this 5th day of February, 2018**

**Mathews N. Nduma**

**Judge**

**Delivered and signed in Nairobi this 16th day of February, 2018**

**Maureen Onyango**

**Judge**

**Appearances**

Mr. Ongicho for Applicant

Mr. Maende for Respondent

Anne Njung'e – Court Clerk