



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT ELDORET

CAUSE NO.148 OF 2017

[formerly Cause No.164 of 2016 – Nakuru]

JULIUS KIPROTICH KIPTOOCLAIMANT

VERSUS

KERIO VALLEY DEVELOPMENT AUTHORITY.....RESPONDENT

RULING

The ruling herein relates to Notice of Preliminary Objections filed by the respondent, Kerio Valley Development Authority and dated 2nd July, 2018 and on the grounds that;

The purported Claimant MERCY NYAMBURA KIPTOO lacks capacity to sue in the instant case on the doctrine of contract as she was not party to the contract of employment between the deceased and the respondent in the instant case and nowhere was it agreed between the deceased and the respondent that such an arrangement was to exist.

Both parties made their oral arguments in court on 11th July, 2018.

The respondent submitted that the claim herein relates to Julius Kiprotich Kiptoo who is deceased and the administrator is Mercy Nyambura Kiptoo. The suit relates to employment and a person not in employment cannot urge the case. Mercy Nyambura Kiptoo has no document to show that she is the legal administrator of the deceased estate and she was not an employee of the respondent. the case should be struck out.

In reply, the claimant submitted that the claimant is the legal representative of the deceased vides application dated 10th October, 2017 she was appointed by the court for this purpose and this application was not opposed by the respondent. There is no application to have the orders issued set aside. The respondent has not relied on any law in urging its objections and therefore this is not a proper objections and the deceased claim does not die with him. the respondent has not filed any defence on the purported contract of service or any material to challenge that there was no employment and the objections made are bad in law and should be dismissed.

The claimant commenced suit under Cause No.164 of 2016 at Nakuru and defined himself as a male adult of sound mind and that at all material times was contracted by the respondent on 1st April, 1991 as a surveyor and he retired therefrom on 5th June, 2015 and claims unpaid gratuity.

On 27th September, 2017 the claimant's advocate moved the court with information that the claimant had died and the court directed that an appropriate application be filed once the estate was ready.

Death occurred during the pendency of the suit.

By application date 10th October, 2017 the claimant's advocate moved the court with Notice of Motion and seeking for orders to be allowed to substitute the claimant (deceased) with his legal representative, Mercy Nyambura Kiptoo. Attached to the application in support was the Affidavit of mercy Nyambura Kiptoo and therein was the Death Certificate of the claimant and a letter of Limited Grant of Letters for Administration *ad litem* issued by the **High Court, Eldoret in *ad Litem* Application No.35 of 2017** and therein giving Mercy Kiptoo letter of Administration *ad Litem* of all the estate of Julius Kiprotich Kiptoo, the claimant herein and who was deceased at the time.

The basis of a limited grant is found in **Section 54** of the Law of Succession Act, which states that:

54. A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.

The grant limited *ad litem* is one normally used for prosecuting or defending proceedings in court. see **ELRC JR No.16 of 2014 Republic versus Attorney General ex parte Isaiah Kipngetich Rotich** and where the court in addressing a similar application held that This type of grant is covered within the Law of Succession Act in the 5th schedule paragraphs 11-16. It is described as Grant for Special purposes. In this regard, Limited Grant of Letters of Administration *Ad Litem* which is provided for under **Form 14** of the **Fifth Schedule** of the Act deals with suits. The said provision states that;

... when it is necessary that the representation of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.

The application set out above was heard on 31st October, 2017 and ruling delivered on 3rd November, 2017 with orders that;

The court in effect allows the motion and orders

- (i) An amended Statement of Claim be filed as served upon the respondent within 10 days from today.*
- (ii) Respondent at liberty to file an amended Response within 10 days of service, if necessary.*
- (iii) Costs in the cause.*

Effectively by this ruling, the court allowed for the substitution of the claimant with the legal representative, Mercy Nyambura Kiptoo on the basis of the application and Notice of Motion dated 10th October, 2017.

Such ruling subsists.

There is no response filed by the respondent despite being served with the Amended Statement of Claim filed on 8th November, 2017.

Accordingly, the issue of the claimant thus resolved and directions on substitution of the claimant addressed by the court, the objections by the respondent lack merit and are hereby dismissed with costs to the claimant.

As pleadings have not closed, time is enlarged by 10 days to allow the respondent file defence. Where no defence is filed as directed, the claimant shall be at liberty to move the court and get a date for hearing of the main claim.

Delivered in open court at Eldoret this 25th day of September, 2018.

M. MBARU JUDGE

In the presence of:

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