



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 2175 OF 2012

(Before Hon. Lady Justice Hellen S. Wasilwa on 31st July, 2017)

**LUCY KADENYI MUDOGA (suing for and on behalf of the family and estate
of GERISHOM MUGADI MUDOGAPLAINTIFF**

VERSUS

THE WRIGLEY COMPANY (E.A) LIMITEDDEFENDANT

RULING

1. The Application before Court is one dated 29.8.2016 where the Applicants seek orders that the Plaintiff herein Gerishom Mugadi Mudoga (deceased) be substituted with Lucy Kadenyi Mudoga the personal representative to his estate and that costs of this suit be provided for.
2. The Applicant avers that the Claimant filed his claim in 2012 and passed on on 29.1.2013. His daughter applied for letters of administration which were issued on 18/7/2016 – 20 days later, she made this application.
3. The Respondents have opposed this application. They filed their replying affidavit sworn by one Fred Gor the Respondent’s People Learning and Development Manager sworn on 27.9.2016. They aver that the application is premised on wrong provisions of law and that the application was filed out of time without leave of Court and is therefore incompetent.
4. They aver that the application is an abuse of the Court process and so want the same dismissed.
5. They cited **Michimikuru Tea Factory Company Limited vs. Jonson Mutabari (suing as the legal representative of the estate of Priscilla Kinya – deceased) Appeal No. 69 of 2014 IC Nyeri.**
6. They also rely on **Eliakim Saka Odipo vs. Dismus Kweyu Malalason CC No. 81 of 2003 Kakamega High Court.**
7. I have considered the submissions of the parties and the relevant provisions of the law. Order 24 rule 3 of the Civil Procedure Rules state as follows:

“Procedure in case of death of one of several plaintiffs’ or of sole plaintiff.

3. (1) Where one of two or more plaintiffs dies and the cause of action does not survive or continue to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within one year no application is made under subrule (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 the 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.

8. Indeed the provisions under rule (3) (2) above envisages a situation where the Court can for good reasons or application extent time for making an application to extend time of would have abated suit. The application so envisaged is one to extend time of one year and have the suit to continue to be alive. The application would of course not be to substitute a party, in this case the Plaintiff.

9. My reading of Order 24 rule 3 is that suit stands abated after 1 year. The same can only be revived by an application to restore it. The wording of Order 24 rule 3 are coached in mandatory terms and therefore an application to substitute a Claimant in an abated suit such as this one cannot lie.

10. It is my finding that the application sought cannot be granted since the suit has already abated. Those are the orders of this Court.

Read in open Court this **31st day of July, 2017.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Guserwa for the Claimant

No appearance for the Respondent