



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

MISC.APPLICATION NO. 21 OF 2017

RUTH WAMBUI MWANGI

AGNES NYAMBURA WANGAI (suing as

the legal representatives of the estate of

Joseph Wangai Muraya

APPLICANTS

v

ALFARAH WHOLESALERS LIMITED

RESPONDENT

RULING

1. For determination is a motion dated 19 April 2017 by the applicants seeking

1. ...

2. **THAT** this honourable court be pleased to order the respondent to forthwith pay to the applicants a sum of Kshs. 1,920,000.00 plus interest at 14% p.a. from 19th August, 2015 to date of full payment as awarded by the Directorate of Occupational Health and Safety in respect of the work related death involving one Joseph Wangai Muraya (deceased) an employee of the respondent.

3. **THAT** in default of so paying the applicants be at liberty to execute.

4. **THAT** the costs of this cause and application be borne by the respondent in any event.

2. When the motion was placed before Court on 20 April 2017, the Court directed that it be served upon the Respondent for *inter partes* hearing 20 June 2017.

3. According to an affidavit of service filed in Court on 18 May 2017, service of the application was effected upon a secretary/daughter of the Respondent's director who accepted but refused to acknowledge service.

4. On the strength of the affidavit, the Court allowed the application to be urged, as an unopposed motion.

5. Among the documents presented to Court in support of the application were a *death certificate* for the deceased, *letters of administration*, an *assessment/award of compensation prepared by the Director, Occupational Health and Safety Office* dated 19 August 2015 and a letter addressed to the Respondent by the same office dated 19 January 2016, reminding it of its obligation to pay the compensation in terms of

the Work Injury Benefits Act.

6. Payment of compensation in cases where an employee dies from an injury arising from accident in the course of work is provided for under section 34 of the aforesaid Act. It is a statutory requirement.

7. Considering the material placed before Court, and the failure by the Respondent to appear in Court to show cause otherwise, the Court allows the motion in terms of orders 2 and 3.

8. The Court also directs the Applicants to serve a copy of this ruling and the attendant Order(s) upon the Respondent within 21 days, and file an appropriate affidavit of service.

9. But before penning off, the Court must observe that the Act is not express on what avenue an application seeking payment of compensation under the Work Injury Benefits Act should take (whether a substantive suit or an application as presented herein).

10. Consequently, the Court will say no more since it did not hear addresses on the point.

11. Costs in the Cause.

Delivered, dated and signed in Nakuru on this 31st day of July 2017.

Radido Stephen

Judge

For Applicant Mr. Murimi instructed by Murimi Ndumia, Mbago & Muchela Advocates

For Respondent did not appear

Court Assistant Nixon/Martin