



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 2555 OF 2012**

**(Before Hon. Justice Hellen S. Wasilwa on 27<sup>th</sup> November, 2017)**

**JOSEPH ISAGI NYANDO.....CLAIMANT**

**-VERSUS-**

**IMAGINE IMC LIMITED.....RESPONDENT**

**RULING**

1. The Application before Court is one dated 15<sup>th</sup> May 2017. It is for substitution of a deceased Claimant with his personal representatives. The Claimant Applicant has attached the death certificate and limited letter of grant of letters of Administration issued by the High Court on 13<sup>th</sup> April 2017. The Applicant contends that the Court delivered Judgement and they were in the process of execution when the Claimant died.
2. The Applicant argues that the suit has not abated because judgement had been delivered and therefore Order 24 rule 11 of Civil Procedure Rules does not apply where case has reached execution.
3. The Respondents oppose the application. They submit that it is true that the suit had been concluded and there is a pending application for stay of exparte judgement which the Court ordered be held in abeyance.
4. The Respondents avers that this is a case of contract and that under the rule of privity of contract, the claim is personal in nature and cannot pass to survivors of the deceased. That the case of death has nothing to do with the employment with Respondent and therefore the claim cannot be enforced by the administrators.
5. They also aver that the suit has abated as Claimant died on 11<sup>th</sup> January 2016 and limited granted was given on 12<sup>th</sup> April 2017. That no application for substitution was made within 1 year as provided for under Order 24 rule 23(1).
6. I have examined the submissions of both parties.
7. Order 24 rule 1 of the Civil Procedure Rules states:

***“the death of a Plaintiff or Defendant shall not cause the suit to abate if the cause of action survives or continues”.***

8. Under Order 24 rule 4(3) an application for substitution should be made within 1 year but the Court is at liberty under rule (3) to extend time for good cause.

9. The issue to determine herein is whether the cause of action survives or continues.

10. In the case of **Alford vs Begg (1848) 12 1 &.LR** – the matter came up for hearing and the Court was informed that one of the parties had died. It was submitted that the suit had resultantly abated but Pigo & C.B observed that there was no authority to support this contention in circumstances where a verdict had been reached prior to the death of one the parties.

11. The argument raised by the Applicant herein is that the cause of action survives because judgement has already been entered for the Claimant. Order 24 rule 1 also envisages survival of a suit - If a cause of action survives. In this case, the judgement entered against the Respondent is for a monetary amount of Kshs.355,000/=. This amount is enforceable and a judgement debt as observed in the Begg's case.

12. It is my finding that in this case the cause of action survives the death of the Applicant being a money judgement. The delay for substitution was occasioned by the delay in grant of letters of administration. I therefore allow the application and order the personal representative of the deceased to be substituted as Claimant herein within 15 days.

13. Costs in the case.

Read in open Court this 27<sup>th</sup> day of November, 2017.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for the Claimant

Khisa for the Respondent