



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 286 OF 2014**

**VERONICA RUGURU WAMAITHA**

**CLAIMANT**

v

**THE BOARD OF GOVERNORS,**

**BLESCO HOUSE GIRLS B SCHOOL**

**RESPONDENT**

**RULING NO. 2**

1. On 31 July 2017 the Court delivered a ruling in which it allowed an application by the Respondent seeking the striking out of the Cause herein on the ground that the cause of action had abated.
2. The Court had allowed the motion to proceed in the absence of the Claimant's advocates on record because there was evidence on record that the firm had been duly served.
3. On 29 September 2017, the Claimant filed a motion seeking
  1. THAT this Honourable Court be pleased to set aside the *ex parte* proceedings of 21<sup>st</sup> June, 2017 and all the consequential orders.
4. The reasons advanced by the Claimant in support of her application are that there was a failure to diarise the hearing date of the application to strike out; that the Claimant had died and letters of administration were only issued on 3 March 2016 and it had been difficult to secure the legal representative to sign documents for substitution.
5. It was also urged that the failure to attend Court was inadvertent and therefore injustice ought not to be visited upon the innocent litigant, and that the advocates on record were conducting the Cause on a *pro-bono* basis.
6. The Respondent in opposing the application urged that the same was unmerited and an abuse of the Court process.
7. On the merits, the Respondent contended that the Court had ordered on 10 March 2015 that an *amended Memorandum of Claim* be filed to substitute the Claimant, but no action was taken and that the application to strike out was served but the Claimant's advocate failed to attend Court.
8. The Court having considered the application and submissions has come to the conclusion that the application ought to fail for the reasons discussed hereunder.

9. The Claimant's advocates on record informed the Court on 10 March 2015 about her death and the Court granted unlimited liberty to amend the Memorandum of Claim upon grant of letters of administration.

10. The Court has now been informed that grant was issued on 3 March 2016 to 2 persons.

11. The Claimant in attempting to explain the delay to amend, though not expressly, contend that it has been difficult to trace one of the legal representatives.

12. In fact, the application appear to suggest that the legal representative had not been traced by the time of filing the application.

13. However, in the view of the Court, the explanation cannot be sustained because the High Court granted letters of administration to 2 persons (there is no reference on attempts made to trace or serve Patrick Njoroge Ruguru) to sign appropriate papers for substitution.

14. Further, the delay of over 1 year in tracing the legal representatives is not sufficiently explained and considering that even by the time of the application they had not been traced, it is left to speculation whether they will be traced at all.

15. The legal representatives were aware of the Cause because the grant was issued for purposes of this Cause, and indeed if they had an interest in following up on its prosecution, they would have taken the initiative to follow up with their advocates immediately after the grant was issued.

16. From the foregoing, the Court orders that the application be dismissed with costs to the Respondent.

**Delivered, dated and signed in Nakuru on this 14<sup>th</sup> day of December 2017.**

**Radido Stephen**

**Judge**

**Appearances**

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

For Respondent Mr. Odoyo instructed by Sheth Wathigo & Co. Advocates

Court Assistants Nixon/Martin