



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 235 OF 2015**

**MIRIAM ATIENO ONG'ANGO**

**CLAIMANT**

v

**GILANIS SUPERMARKET LIMITED**

**RESPONDENT**

**RULING**

1. Before Court is an application dated 27 July 2017 by the Kenya Union of Commercial, Food and Allied Workers seeking

1. ....

2. THAT the deceased **MIRIAM ATIENO ONGANGO** the Claimant herein be substituted by the legal representative of the Estate of the deceased who is **GEORGE PHILIP OTIENO ONGANGO**.

3. THAT **GEORGE PHILIP OTIENO ONGANGO** be made a party and be allowed to proceed with the suit for and on behalf of the Estate of **MIRIAM ATIENO ONGANGO (Deceased)**.

4. ...

5. ...

2. The Respondent filed a replying affidavit opposing the application on 21 September 2017 and arguments were taken on 11 October 2017.

3. It is not in dispute that the Claimant died on 9 April 2016.

4. The Respondent did also not dispute that the cause of action (*unfair termination of employment contract*) presented by the Claimant survived her death (in terms of the Law Reform Act).

5. What is in dispute is whether the cause of action abated on 9 April 2017, as contended by the Respondent in terms of Order 24 rule 3 of the Civil Procedure Rules, which is in the following terms

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.

6. A textual reading of the provision suggest that it applies in suits where there are more than 1 Plaintiff/Claimant (where one of two or more plaintiffs...).

7. That case does not obtain in the present case.

8. The Court will therefore allow the application dated 27 July 2017, and order the Union to file and serve an *Amended Memorandum of Claim* within the next 15 days failure to which the Cause will stand struck out.

9. No order as to costs.

**Delivered, dated and signed in Nakuru on this 8<sup>th</sup> day of December 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Tacko, Industrial Relations Officer

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

Court Assistants Nixon/Martin