



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS**

**COURT OF KENYA AT NAIROBI**

**CAUSE NO. 811 OF 2012**

**LUCY NYANDIA MWANGI ..... CLAIMANT**

*VERSUS*

**MATHENGE & MUCHEMI ADVOCATES.....1<sup>ST</sup> RESPONDENT/DEFENDANT**

**VIRGINIA WANGUI MATHENGE ..... 2<sup>ND</sup> INTENDED RESPONDENT**

Mr. Kimathi for Claimant / Applicant

Mr. Omariba for the Respondent

**CORRECTED RULING**

1. The Applicant filed a Notice of Motion dated 19<sup>th</sup> March 2014 seeking to enjoin one Virginia Wangui Mathenge as the 2<sup>nd</sup> Intended Respondent by virtue of being the Court appointed Administrator of the estate of the late G. K. Mathenge in Succession Cause No. 1158 of 2012 at the Family Division of the High Court Nairobi.

2. The Applicant was issued with orders by this Court on 26<sup>th</sup> July 2013 to attach the judgment Debtors Bank Account.

However by this time the said account had only Kshs.44,671.00 out of the decretal sum of Kshs.160,000.00 awarded by the Court, leaving unpaid balance of Kshs.115,329.00.00 payable to the Applicant.

3. The Respondent firm was a sole proprietorship by the deceased husband of the Intended 2<sup>nd</sup> Respondent Virginia Wangui Mathenge.

4. The Intended 2<sup>nd</sup> respondent obtained the limited Grant of letters of Administration *ad litem* on 26<sup>th</sup> April 2013 whereas the suit was filed on 10<sup>th</sup> May 2012 way before the limited Grant of letters of Administration was issued.

5. The Petition for the Administration of the estate is pending before High Court Family Division being Succession Cause No. 1158 of 2012.

6. The firm of Advocates had entered appearance in this matter on 6<sup>th</sup> June 2012 and filed a statement of defence on the same date.
7. The case proceeded ex parte in default of attendance of the Respondent and judgment was delivered on 9<sup>th</sup> May 2013.
8. The sole proprietor of the Respondent died on 21<sup>st</sup> March 2011, a matter which was in the personal knowledge of the Claimant, Lydia Nyandia Mwangi.
9. As a matter of fact, it was as a result of the death of Advocate G.K. Mathenge, that the employment contract of the Claimant was terminated via letter dated 15<sup>th</sup> April 2011.

The judgment is in respect of terminal benefits due to the Claimant.

#### **10. Determination**

From the foregoing it is common cause that notwithstanding the demise of Advocate, G. K. Mathenge, the law firm filed a notice of appearance and statement of defence to the claim on 6<sup>th</sup> June 2012. 11. The firm only failed to attend the hearing of the suit. The firm therefore continued to operate notwithstanding the demise of Advocate G. K. Mathenge.

12. The default in attending the hearing cannot be attributed to the death of Advocate G. K. Mathenge since the firm had continued to operate normally.

13. In the circumstances, the Claimant cannot be faulted for proceeding with the hearing ex parte.

14. It is common cause that the Intended 2<sup>nd</sup> Respondent was under Succession Cause No. 1158 of 2012 issued limited Grant of letters of Administration.

15. The Intended Respondent has the legal capacity though limited to handle the estate of the late G. K. Mathenge, Advocate, who we have come to learn was the sole proprietor of the Respondent law firm.

16. The Application for joinder is well merited, as the Intended 2<sup>nd</sup> Respondent is a necessary party to these proceedings.

The Application for joinder is therefore allowed to enable conclusion of the pending proceedings in this matter.

Costs in the cause.

**Dated and Delivered at Nairobi this 13<sup>th</sup> day of February, 2015.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**