



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO. 373 OF 2013**

JOSEPH K. MULI .....1<sup>st</sup> CLAIMANT  
CHARLES M. MIANO..... 2<sup>th</sup> CLAIMANT  
JULIUS M. MAINA.....3<sup>th</sup> CLAIMANT  
JOSEPH M. KAMAU.....4<sup>th</sup> CLAIMANT  
ISAYA O. BARAZA.....5<sup>th</sup> CLAIMANT  
ELAKU M. KANGELU.....6<sup>th</sup> CLAIMANT  
CHARLES K. KAHIGA.....7<sup>TH</sup> CLAIMANT  
OBADIAH K. WAWERU.....8<sup>TH</sup> CLAIMANT  
RICHARD K. WAWERU.....9<sup>TH</sup> CLAIMANT  
HASSAN O. AKIYABA.....10<sup>TH</sup> CLAIMANT

**VERSUS**

DEUTSCHE GESELLSCHAFT FUR TECHNISCHE ZUSAMMENARDEIT GMBH,  
GTZ – INTERNATIONAL SERVICES (GTZ - IS.....RESPONDENT

**RULING**

By a notice of motion dated 30<sup>th</sup> May 2013 the applicants Gerald Muli Kiseve and Rose Nyambura Njaria the legal representatives to the estates of Kiseve Isayah Muli Joseph and Charles Kihoro Kahiga respectively seek to be joined and made parties to the claim herein as 1<sup>st</sup> and 7<sup>th</sup> Plaintiff’s in place of Joseph K. Muli and Charles Kihoro Kahiga respectively, now deceased. The application is supported by the affidavit of Gerald Muli Kaseve and Rose Nyambura Njaria, the applicants.

In the affidavit of Gerald Kiseve Muli he depones that he is the first born child of the 1<sup>st</sup> Plaintiff Joseph K. Muli who died on 5<sup>th</sup> January 2010. He has attached a copy of the death certificate as exhibit 'GKM1' of the affidavit. He depones further that he obtained letters of administration *ad Litem* to the estate of the deceased on 28<sup>th</sup> February 2013 and that he is desirous of pursuing his father's claim on behalf of his father's estate. He prays to be joined as the 1<sup>st</sup> Plaintiff to this suit.

In the affidavit of Rose Nyambura Njaria she depones that she is the wife of the 7<sup>th</sup> Plaintiff who died on 13<sup>th</sup> December 2009. A copy of the death Certificate is attached as exhibit "RNN1" to the affidavit. She obtained letters of Administration *ad Litem* on 22<sup>nd</sup> April 2013 and desires to pursue her deceased husband's claim in this suit on behalf of his estate. She prayed to be enjoined as the 7<sup>th</sup> Plaintiff on behalf of her deceased husband.

The Respondent opposed the application. There is no copy of the grounds of opposition in the file but the grounds are set out in the written submissions of the Applicant's grounds on the face of the application.

The application came up for hearing on 3<sup>rd</sup> February 2014 when the parties agreed to proceed by way of written submissions. The applicants filed submissions on 18<sup>th</sup> February 2014 while the Respondent filed their submissions on 21<sup>st</sup> February 2014.

The application is brought under Rule 24 and Rule 3 (1) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.

The applicants submitted that Rule 24 of the Civil Procedure Rules provides for extension of time for substitution of suits in relation to deceased plaintiff's under the proviso even after one year and that the claim does not abate automatically forever after one year as it can be revived by the court. It is submitted that the court still has discretion and power to extend time within which to substitute a deceased plaintiff. The applicants urged the court to apply the provisions of Section 1A (1) of the Civil Procedure Act and Article 159 (d) of the Constitution and allow the application.

The Respondent submits that the claims for 1<sup>st</sup> and 7<sup>th</sup> Claimants abated one year from the date of death as provided under order 24 Rule 3 (2) of the Civil Procedure Rules 2010. The Respondent further submitted that there is therefore no claim for the court to substitute the applicants, that the court has no jurisdiction to hear a claim that has abated by operation of the law and that in any event there is no application for extension of time within which the claim of the applicants abated. The Respondent further submitted that the applicants have not given any reason for failing to move the court in time.

The Respondent relied on the following cases:-

1. **In High Court of Kenya at Mombasa Civil Case No.7 of 1993 Camilo Duranti v M/s Alamin & D.T.K Ltd, Katana Pinzano,**
2. **In Kenya Farmers Co-operative Union Limited v Charles Murgor (deceased t/a Kaptabei Coffee Estate (2005) eKLR,**
3. **Wallace Kinuthia v Anthony Ndungu Muongi & 3 Others (2013) eKLR**
4. **Titus Kiragu v Jackson Mugo Mathai & Another (2013) eKLR,**
5. **Rotich Cherutich & 3 others v The Director of Surveyors (2013) eKLR,**
6. **LLR No.5359(HCK): Shirji Builders v Ogada**
7. **Benjamin Sipitali Mungwana v Norah Khaoya Shem & 2 others (2005) eKLR,**
8. **Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others (2013) eKLR,**
9. **Fredrick Mwangi Nyaga v Garam Investment & Another (2013) eKLR,**

I have considered the application, the grounds in support thereof and the supporting affidavits. I have also considered the grounds of opposition, the written submissions and the authorities cited.

As provided in Order 24 Rule 3 (2) of the Civil procedure Rules 2010 , substitution of a deceased plaintiff

must be done within one year failing which the claim abates. The proviso to Rule 3 (2) grants the court the power to extend the time on application, and for good reason.

In the present case there is no application for extension of time. Even if such application were to be presumed by the fact of the application by the applicants to be made parties, no reason has been given for the inordinate delay in filing the application or obtaining letters of administration. Both applicants have delayed by more than two years to file applications to be enjoined as parties. That inordinate delay should have been sufficiently explained.

For the foregoing reasons, the court finds that the claim by the 1<sup>st</sup> and 7<sup>th</sup> Claimants abated on 5<sup>th</sup> January 2011 and 13<sup>th</sup> December 2010 respectively. The claims having abated, there is no claim to which the applicants may be enjoined.

The applications have no merit and are dismissed.

Costs will be in the Cause.

Orders accordingly.

**Dated and delivered at Nairobi this 29<sup>th</sup> day of May 2014**

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

In the presence of:

No appearance for Applicant

No appearance for Respondent