



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

PETITION NO. 1 OF 2020

PRAXIDES MUSUNJI BULEMI.....PETITIONER

VERSUS

THE COMMISSIONER OF PRISONS.....1ST RESPONDENT

THE KENYA PRISON SERVICE.....2ND RESPONDENT

THE COMMANDANT,

KENYA PRISONS STAFF TRAINING COLLEGE, RUIRU.....3RD RESPONDENT

RULING

1. The application, dated 29th June 2020, is by the petitioner seeking leave to amend her petition. The application is brought under Rules 17(b) and 18 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (also known as the Mutunga Rules).

2. Rule 18 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 provides:

“a party who wishes to amend its pleadings at any stage of the proceedings may do so with the leave of the court.”

3. In *Humanity Action Knowledge Integrity in Africa Trust (Haki Africa) & 19 others vs. Attorney General & 3 others; Kenya National Commission on Human Rights (KNHCR) & 2 others (Interested Parties)* [2020] eKLR, the court observed:

“Rule 18 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (hereafter “the Mutunga Rules”) should be the starting point for purposes of the instant application.

12. The Rule allows parties to amend their pleadings, and in particular, the Petition, with leave of the Court at any stage of the proceedings. Amendment of petitions once filed can only be done with the permission of the court. Additionally, the permission and consequent amendment may be granted and made respectively at any time or stage of the proceedings. ...

13. It is trite law that an amendment ought to be allowed as long as the same is not frivolous or occasions prejudice to the opposing Party.”

4. In *Mombasa Cement Limited vs. Speaker of the National Assembly & 2 others* [2016] eKLR, the court stated:

“The general rule when it comes to amendments of pleadings is that amendments ought to be freely allowed so long as they do not occasion any prejudice to the party facing them. The test whether or not to allow amendments is now relatively clear.”

5. In *Geyser International Assets Limited vs. Attorney General & 3 Others* [2019] eKLR, the court stated:

“... a party should always be allowed to make such amendments as are necessary for determining the real issues in controversy or avoiding a multiplicity of suits. The court then went on to state that the amendments or joinder would be allowed provided (i) there had been no undue delay, (ii) that no vested interest or accrued right was affected and (iii) no injustice or prejudice would be occasioned to the other side...”

6. From the above decisions, it should be clear that the court can, at any stage of the proceedings, allow a party to amend its pleadings, so long as the same will not prejudice the other party. The applicant herein seeks to amend the petition, to add a prayer for the remedy of reinstatement. This is a remedy provided for under the Constitution, and is available to the petitioner, upon determination by court in her favour. The respondent argues that the amendment will raise a fresh cause of action, and that the same would amount to an abuse of court process, considering that the matter pends judgment. I note that the prayer of reinstatement arises from the issues raised in the petition, which are still intact. The amendment does not, in any way, alter the cause of action as submitted by the respondent.

7. It is my humble view that the prayer for amendment of the petition is made in good faith, and that allowing the application will assist the court to conclusively deal with all matters in controversy. The proposed amendment will not in any way prejudice the respondent; instead, it will ensure that the ends of justice are met, as the petitioner will be able to put across her whole case, and the respondents will be given an opportunity to defend themselves.

8. The final orders that I shall make with respect to the application, dated 29th June 2020, are:

(a) That the petitioner is hereby granted leave to amend her petition dated, 4th February 2020;

(b) That the petitioner shall file and serve the amended petition on the respondents within 14 days from the date hereof;

(c) That the respondents shall be at liberty to file their responses or additional responses or amend any filed responses, and serve the same within 14 days from the date of service of the amended petition; and

(d) That each party shall bear their own costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 20th DAY OF November 2020

W MUSYOKA

JUDGE