



Gituanja v Spread Eagle Ltd (Employment and Labour Relations Cause E963 of 2022) [2024] KEELRC 2256 (KLR) (19 September 2024) (Ruling)

Neutral citation: [2024] KEELRC 2256 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E963 OF 2022
BOM MANANI, J
SEPTEMBER 19, 2024**

BETWEEN

JAMES KIBATHI GITUANJA CLAIMANT

AND

SPREAD EAGLE LTD RESPONDENT

RULING

1. The application before the court seeks leave of the court to amend the Statement of Defense. The Respondent in the cause contends that there is need to amend the aforesaid pleading in order to introduce aspects of the defense that were omitted.
2. The Respondent contends that the Statement of Defense was filed by the lawyers who were initially on record for it. It contends that its current lawyers have advised on the need to rejig the pleading in order to bring on board all the issues that are necessary for the proper determination of the dispute.
3. For example, the Respondent contends that the Claimant’s employment was lost through mutual separation when he voluntarily resigned. However, this fact is not expressly captured in the Statement of Defense. As such, it is necessary to amend the said pleading in order to capture it.
4. The Claimant has opposed the application. The thrust of the opposition is that the application does not meet the threshold for grant of the orders sought.
5. The Claimant accuses the Respondent of having filed the application too late in the day. In the Claimant’s view, this speaks to the Respondent’s desire to delay the expeditious resolution of the case.
6. The Claimant further contends that the proposed amendment seeks to bring on board a new line of defense. He contends that through the proposed amendment, the Respondent wishes to aver that he (the Claimant) voluntarily resigned from employment, a matter which had not been initially pleaded. As such, the application ought to be declined.



Analysis

7. The principles that govern amendment of pleadings are now well settled. As a general rule, requests to amend pleadings should be freely granted at whatever stage of the trial so long as they are not designed to introduce a new and inconsistent cause of action or defense.
8. The philosophy behind this position is that a court of law should allow parties to bring on board all issues that are necessary for the effectual resolution of the dispute that is before it. This is important as it ensures that all issues in the dispute are determined at once under one roof without the necessity of filing multiple suits.
9. It is acknowledged that all applications, including those for amendment of pleadings, may occasion some form of prejudice to the opponent. However, this should not be reason to reject the application if the prejudice occasioned can be compensated by an award of costs.
10. The only prejudice that must not be tolerated is one which cannot be redressed by an award of costs. This includes admitting amendments which take away an accrued right or defense such as the one on limitation of actions.
11. I have considered the instant application in the context of the above principles. The Claimant argues that the application has been filed after undue delay. I do not agree.
12. The record shows that trial of the suit is yet to take off. As such, the allegation that the application has been presented too late in the day is unfounded. The law permits the filing of such applications at any stage of the trial.
13. The Claimant also contends that the proposed amendment seeks to introduce a new defense. As such, it should be declined.
14. I do not think that the intention of the law is to bar a party from amending his pleadings solely because the proposed amendment will introduce a new cause of action or defense. What the law frowns upon is if the cause of action or defense that is proposed to be introduced will be inconsistent with the cause of action or defense that has already been pleaded.
15. In the Respondent's response to the Claimant's assertion that he was forced into resigning from employment at paragraph 11 of the Statement of Claim, it (the Respondent) denies that the Claimant lost employment in the manner that he alleges. I understand this line of defense to be contesting the Claimant's contention that he was forced to resign from employment. In effect, the Respondent is implying that the Claimant voluntarily left employment. Therefore, the request to amend the Statement of Defense to expressly plead this fact does not amount to an attempt to introduce a new defense let alone one which is inconsistent with the one that is already pleaded.

Determination

16. Having regard to the foregoing, I arrive at the conclusion that the request to amend the Statement of Defense is merited.
17. Accordingly, the application dated 22nd February 2024 is allowed on the following terms:-
 - a. Leave is granted to the Respondent to amend its Statement of Defense in the manner and style set out in the draft amended defense attached to the application.
 - b. The Respondent has 14 days from the date of this order to file and serve the amended Statement of Defense.



- c. The Claimant is granted 14 days from the date of service of the amended Statement of Defense to file and serve a reply to the said pleading.
- d. Costs of the application are granted to the Claimant.

DATED, SIGNED AND DELIVERED ON THE 19TH DAY OF SEPTEMBER, 2024.

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

..... for the Respondent/Applicant

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

