



Musyoki v Kenya Airways Limited (Employment and Labour Relations Cause E644 of 2021) [2025] KEELRC 2997 (KLR) (30 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2997 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E644 OF 2021
BOM MANANI, J
OCTOBER 30, 2025**

BETWEEN

MORRIS MUSYOKI CLAIMANT

AND

KENYA AIRWAYS LIMITED RESPONDENT

RULING

1. The application before court is dated 10th April 2025. Through it, the Claimant seeks leave of the court to amend his amended Statement of Claim and to introduce additional documents as part of his exhibits in the cause.
2. The application is not supported by an affidavit. However, it has set out the grounds on which it is anchored.
3. The Claimant contends that the law allows him to introduce documents in support of his case at any stage of the trial process. As such, he asks the court to allow him to place the documents in question on record.
4. In the amended Statement of Claim dated 23rd March 2022, the Claimant seeks inter alia, the following orders:-
 - a. An order that the Respondent's decision to terminate his employment was unlawful.
 - b. Payment of Ksh. 15,735,000.00 in terminal dues.
 - c. An order for reinstatement to employment.
 - d. An alternative order for re-engagement.
 - e. An order for costs of the suit.



- f. An order for interest.
 - g. An order for general damages.
 - h. An order directing the Respondent to disclose the Claimant's salary as at the date when his contract was terminated in February 2017.
 - i. An order directing the Director of Criminal Investigations to produce statement written by several individuals including the Claimant on issues relating to his case.
 - j. An order directing the Respondent to produce the letter dated 28th December 2004 vide which the Respondent appointed the Claimant.
 - k. An order directing the Respondent to produce the Claimant's pay slips from 28th December 2012.
 - l. An order directing the Respondent to provide evidence demonstrating that the Claimant disclosed the Respondent's confidential information.
 - m. An order directing the Respondent to produce evidence to show that it (the Respondent) had warrants for the arrest of the Claimant when it (the Respondent) allegedly masterminded the Claimant's arrest at his residence on 19th May 2020.
 - n. An order directing the Respondent to allow the Claimant access to his personal employment file.
 - o. Any other relief which the court may consider fair and just to grant.
5. At paragraph 25 of the foresaid amended Statement of Claim, the Claimant lists what he believes comprises his terminal benefits to include the following:-
- a. Three months' salary in lieu of notice Ksh. 435,000.00.
 - b. Twelve months' compensation Ksh. 1,740,000.00.
 - c. Salary for the period he served as the Respondent's loading supervisor.
 - d. Salary from 2018 to the date of conclusion of the suit.
 - e. Benefits which he would have enjoyed had he remained in employment until his retirement age.
 - f. Agreed payment of 5% of the amounts paid to Deloitte.
 - g. 2% revenue earned by the Respondent between 2017 and 2018.
6. In the same paragraph (par 25 of the amended Statement of Claim), the Claimant also makes claims for: punitive damages; psychological damages; damages for loss of employment; damages for physical and mental anguish due to harassment; rebate ticket certificate. He also seeks an order directing the Respondent to provide him with documents which he may require for purposes of prosecuting his claim.
7. In the proposed amendments, the Claimant seeks to introduce the following changes to the amended Statement of Claim:-
- a. A plea for three months' salary in lieu of notice Ksh. 435,000.00.
 - b. A plea for twelve months salary in compensation Ksh. 1,740,000.00.



- c. An order for reinstatement considering that he allegedly is still in the payroll system of the Respondent.
 - d. An alternative order for re-engagement.
 - e. An order for payment of salary from 2012 to 2017.
 - f. An order for payment of salary for the period he served the Respondent as a loading supervisor.
 - g. An order for payment of salary from mid-2018 to the date of determination of the suit.
 - h. An order for payment of the benefits he would have enjoyed had he remained in the Respondent's employment until his retirement age.
 - i. Agreed payment of 5% of total amount of what Deloitte was paid between 2016 and 2018.
 - j. 2% of revenues earned by the Respondent between 2017 and 2018.
 - k. An order for payment of punitive damages.
 - l. An order for payment of psychological damages.
 - m. An order for payment of damages for loss of employment and career.
 - n. An order for payment of damages for physical and mental anguish due to harassment.
 - o. Rebate ticket certificate.
 - p. Interest on accrued benefits.
 - q. An order to compel the Respondent to provide him (the Claimant) documents which might be in its (the Respondent's) custody for purposes of prosecuting his claim including proof of payments to Deloitte and pay slips as at 2012.
8. A comparison of the reliefs sought in the amended Statement of Claim and the proposed reliefs in the proposed amendments to the Statement of Claim demonstrates that almost all the matters which the Claimant proposes to introduce through the proposed amendment are already pleaded in the amended Statement of Claim. The only matter which appears to be new relates to the claim for salary for the period between 2012 and 2017. I shall address this matter later in the ruling.
9. The Respondent has opposed the application. It has filed Grounds of Opposition erroneously dated 17th March 2025 but presented to court on 17th June 2025 as per the court's Case Tracking System (CTS).
10. The Respondent, inter alia, contends that:-
- a. The Claimant has already closed his case. As such, the request to amend the Statement of Claim and adduce new evidence has been presented too late in the day and amounts to abuse of the court process.
 - b. The application for leave to amend the Statement of Claim and introduce additional evidence offends the principle of finality of litigation.
 - c. The amendment sought by the Claimant will prejudice the defense case which was formatted on the basis of the original Statement of Claim.



- d. The proposed amendments have been presented to court more than four years after the original Statement of Claim was filed. Yet, no explanation has been given why they (the amendments) were not sought earlier.
 - e. The Claimant has not explained why he did not present the new evidence he wishes to place on record during the trial of his case.
 - f. The Claimant has not demonstrated that the documents he seeks to introduce in evidence were unavailable and beyond his reach at the time he presented his case.
 - g. The proposed amendments and new evidence are intended to cover weaknesses in the Claimant's testimony and defeat the defense case.
 - h. The proposed amendments violate the principles of fair trial and procedural integrity.
 - i. The application is an afterthought and brought in bad faith and therefore an abuse of the court process.
 - j. The Claimant's actions amount to constant shifting of his case, conduct which the court should not countenance.
11. The court gave directions for the application to be canvassed through written submissions. In compliance with the directions, the parties filed their respective submissions.

Analysis

12. One of the requests which the Claimant makes in the application is to be allowed to produce two documents as evidence in support of his case. The two documents are his pay slip from the Respondent dated December 2018 and the Respondent's letter to him dated 5th July 2017.
13. The Respondent objects to introduction of this evidence on the ground that the Claimant has not explained why he did not tender it during the trial of his case. Further, the Respondent avers that the Claimant cannot seek to introduce the evidence after his case has been closed.
14. The court record shows that the Claimant testified in the cause on 26th April 2023. However, there is no formal entry on the file to indicate that his case was closed on that day.
15. All that the record indicates is that on the material day, the trial Judge adjourned the matter at 4.05 PM on account of exigencies of duty and time after he had taken the Claimant's evidence. He relisted the matter for further hearing on 12nd October 2023.
16. On 12th of October 2023, the trial did not take off. After the Claimant informed the court that he wished to continue with the trial in person, the court adjourned the cause to 29th November 2023 presumably to allow him time to prepare for the trial without representation.
17. Subsequent to this, the Claimant filed an application dated 26th November 2023 seeking an order to investigate a number of documents which the Respondent intends to tender in evidence. That application was heard and dismissed on 28th February 2024 before the suit was set down for hearing on 6th May 2024.
18. The record shows that the Claimant filed yet another application dated 10th March 2024 seeking the recusal of the trial Judge. The Judge allowed the application and disqualified himself from the case vide his ruling dated 10th July 2024.



19. Thereafter, the file was placed before the Presiding Judge, Claims Division for re-allocation. Vide her order of 29th July 2024, the Presiding Judge allocated the cause to this court for further processing.
20. On 2nd October 2024, the advocate for the Respondent informed the court that the matter was pending defense trial. The Claimant did not dispute this fact. He only intimated that he had a pending application dated 10th March 2024.
21. Thus, although there is no formal entry on the file to show that the Claimant's case was closed on 26th April 2023, the representations which the parties made to the court on 2nd October 2024 confirm that his (the Claimant's) case was closed on that day. I find as such.
22. The court record shows that after some back and forth on 2nd October 2024, the Claimant conceded that his application dated 10th March 2024 had been spent. As such, the matter ought to have proceeded to defense trial.
23. However, the Claimant requested orally to re-open his case in order to clarify some aspects of his case. The court file shows that the defense did not object to the request. As such, the court issued an order to re-open the Claimant's case and also granted the Respondent the right to cross examine him (the Claimant) on the issues that may arise as a result.
24. From the foregoing, it is apparent that on 2nd October 2024, the Claimant's case was re-opened with the concurrence of the parties. As such, the Respondent's contention that the Claimant's case is currently closed is inaccurate.
25. The application dated 10th April 2025 conflates two distinct issues. It seeks to introduce additional documents as part of the Claimant's case and also to amend the amended Statement of Claim.
26. With regard to the request to present additional evidence, this matter was impliedly addressed on 2nd October 2024 when the parties agreed to re-open the Claimant's case. The court understood the order of 2nd October 2024 to have provided the Claimant a window to present evidence limited to clarifying what he said required clarification. As such, it is unnecessary for him to move the court to address a matter which the parties had already addressed.
27. As regards the request to present the two documents that are attached to his application as exhibits in the cause, this should follow the usual procedure for production of documentary evidence. It is up to the Claimant to seek to introduce the two documents during the trial.
28. As per law, the Respondent reserves the right to object to production of the documents in accordance with the rules of evidence whereupon the court will rule on the matter. Put differently, the Claimant cannot ask the court to admit the impugned documents into the court record without following the procedure for production of documentary evidence.
29. The second aspect of the application relates to the request for leave to amend the amended Statement of Claim in order to introduce certain claims. As noted earlier, most of the matters which the Claimant seeks to address through the proposed amendment are already covered in the amended Statement of Claim. As such, it is superfluous for him to ask the court to allow him to amend his pleadings to bring on board matters which are already pleaded.
30. There is however one new matter in the proposed amendment which relates to alleged accrued salary from 2012 to 2017. The Claimant seeks to introduce this claim as part of his cause of action in the suit more than three years after the purported cause of action arose.



31. Under section 89 (previously section 90) of the *Employment Act*, the Claimant ought to have moved the court in respect of this claim within three years of the cause of action arising. He did not. As such, he cannot seek to introduce it at this stage as it is time barred.
32. More importantly, the Respondent has challenged the request to amend the amended Statement of Claim because of the stage at which the Claimant has presented it to court. It is the Respondent's case that the proposed amendments have been presented to court too late in the day.
33. As pointed out earlier in the ruling, the Claimant gave his testimony in the matter and closed his case sometime in April 2023. He only requested to reopen the case on 2nd October 2024 in order to clarify aspects of the claim which he believes require further clarification. This raises the question whether it is appropriate for him to take advantage of this window to seek to amend his pleadings in order to bring on board new matters.
34. The law on amendment of pleadings is now well settled. Whilst it is true that a litigant is free to seek to amend his pleadings at any time of the trial process, late amendments are generally discouraged particularly if they are likely to occasion injustice to the opponent. Further, such amendments will normally not be allowed unless the applicant is able to justify why he/she did not make the request earlier.
35. In *Onyuna v Anyango* [2024] KEELC 6390 (KLR), the court rejected an application to amend an originating summons on the ground that the request was made too late in the day. The court observed that the applicant had not explained why the application for amendment was filed too late after the hearing of the cause had commenced. In the court's view, the application was an afterthought.
36. In *Daykio Plantations Limited v Galba Mining Limited & 4 others* [2025] KEHC 4504 (KLR), the court rejected a request to amend pleadings which was presented after the case had been heard and was pending final submissions. The court observed that the proposed amendment was going to prejudice the Respondent if allowed at that stage of the trial.
37. In the instant case, the Claimant seeks to amend his pleadings to restate matters which are already pleaded. In this respect, the court is of the view that the proposed amendment is unnecessary.
38. Further, the court notes that the Claimant presented his request to amend the amended Statement of Claim after he had already testified in the matter. As such, there is legitimacy in the Respondent's fears that he may be seeking to repair weaknesses in his case. This will certainly be prejudicial to the Respondent.
39. It is also noteworthy that the only new claim which the Claimant seeks to introduce for accrued salary for the period between 2012 and 2017 is time barred. To allow him to bring on board this new claim will take away the Respondent's accrued defense of limitation against the claim. Undoubtedly, this will occasion injustice to the defense.

Determination

40. The upshot is that the court finds that the application dated 10th April 2025 is unmerited.
41. As such, it is disallowed.
42. Costs of the application are granted to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF OCTOBER, 2025

B. O. M. MANANI



JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

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

