

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI

ELRC CAUSE NO E112 OF 2020

**PETER MULWA
MALUSI.....CLAIMANT**

VERSUS

**THE MANAGING DIRECTOR WOK AND WINE.....
RESPONDENT**

RULING

Background

1. Before the court for determination is the application dated 12th March 2025 through which the Claimant seeks leave to amend the Memorandum of Claim to add two Respondents to the action. He also seeks to introduce additional reliefs relating to service pay and annual leave for 21 days for the years worked.
2. The Claimant contends that the failure to plead the additional claims and to onboard the proposed Respondents at the time he filed suit was out of a genuine error. He further contends that the proposed amendments will not prejudice the Respondent and that it is in the interests of justice to allow the application.
3. The Claimant alleges that when he instituted suit, Wok and Wine was operating as a corporate body. However, he

asserts that he was informed by undisclosed sources that this ceased to be the case in 2023. He alleges that he has since been dealing with the directors of the company.

4. The Claimant avers that he fears that if judgment is delivered in his favour against a non-existent company, he may not be able to enforce it (the judgment). As such, he contends that he has opted to bring the directors of the Respondent on board the proceedings to avoid this eventuality.
5. The Claimant further alleges that some information was left out of the pleadings when he filed suit. As such, he contends that it is necessary to amend the pleadings to introduce the information.
6. The application is opposed. The proposed 2nd Respondent has sworn an affidavit dated 15th July 2025 to anchor the objection to the motion.
7. The affiant avers that the request to amend the Statement of Claim to bring on board other parties and reliefs is time barred in terms of section 90 of *the Employment Act*. As such, he avers that the motion should be declined.
8. The affiant disputes the Claimant's assertion that the Respondent no longer exists as a corporate body. He contends that the Claimant has not provided evidence to back the claim.
9. The affiant contends that the Claimant has not demonstrated that he had an employment relationship with the proposed

Respondents. As such, he contends that it has not been demonstrated that the proposed Respondents are necessary parties in the action.

Analysis

10. According to the Memorandum of Claim which was filed in February 2023, the Respondent allegedly changed its management and name on 31st October 2016 and informed employees that it was going to reabsorb them and also pay their terminal dues within three months of that date but did not do so. The Claimant alleges that the Respondent's actions, in effect, rendered his position redundant within the meaning of section 40 of *the Employment Act*. He contends that despite this, the Respondent did not pay him his terminal dues and efforts to resolve the stalemate through his trade union and the Ministry of Labour and Social Protection have yielded no fruit.
11. From this narration, it is apparent that the cause of action in the suit arose on 31st October 2016 when the Respondent allegedly declared the Claimant's position redundant. This being the case, the Claimant ought to have filed suit to challenge the impugned redundancy within three years of the aforesaid date (see section 89 of *the Employment Act*).
12. The instant application which seeks to introduce additional parties and reliefs to the suit was filed in March 2025, more than eight (8) years from the date of accrual of the cause of

action. As such, the request in the application is statute barred and cannot be granted.

Determination

13. The upshot is that the application dated 12th March 2025 seeks to introduce claims which are statute barred. It also seeks to bring on board other Respondents outside the timelines that are contemplated under section 89 of *the Employment Act*.
14. As such, the application is bad in law and is thus dismissed.
15. Costs of the application to abide the outcome of the suit.

Dated, signed and delivered on the 24th day of February, 2026

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

ORIGINAL