



**Mwenje v Kenya Broadcasting Corporation & another (Cause E453 of 2022) [2026] KEELRC 1019 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1019 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE E453 OF 2022**  
**CN BAARI, J**  
**APRIL 23, 2026**

**BETWEEN**

**BENARD WILLY MWENJE ..... CLAIMANT**

**AND**

**KENYA BROADCASTING CORPORATION ..... 1<sup>ST</sup> RESPONDENT**

**THE BOM KENYA BROADCASTING CORPORATION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. For determination is the Claimant/Applicant's motion application dated 27<sup>th</sup> October, 2025, brought pursuant to Sections 12(3J)(viii) and 20 of the *Employment and Labour Relations Court Act*, 2011, Rules 14(6) and 17 of the Employment and Labour Relations Court (Procedure)Rules, 2016. The Applicant seeks the following reliefs: -
  - i. Leave be granted to the Claimant to amend the Memorandum of Claim dated 24<sup>th</sup> day of June 2022 to properly include and particularize the prayers and computed claims arising from his unlawful termination by the Respondent.
  - ii. The annexed draft Amended Memorandum of Claim be deemed as duly filed upon payment of the requisite court fees.
  - iii. Costs of this application be in the cause
2. The application is supported by grounds on the face and the supporting affidavit of Benard Willy Mwenje, the Applicant herein.
3. The Applicant states that he filed the original Memorandum of Claim on 24<sup>th</sup> June 2022, but made an inadvertent error by stating prayers without supporting computations. He avers that the proposed amendment seeks to correct this by clarifying the reliefs and including calculations for salary arrears, notice pay, leave pay, and compensation for unlawful termination.



4. It is his case that since the case has not yet proceeded to hearing, the amendment will not prejudice the Respondent, and argues that allowing the amendment is necessary for a fair and just determination of the case.
5. The Respondent opposed the application vide a Replying affidavit sworn on 18<sup>th</sup> December, 2025, by one Paul Jilani, their corporation Secretary.
6. The Respondent contends that the Claimant’s explanation of an “inadvertent error” is unsupported and that the proposed amendments go beyond mere clarification and have instead introduced new claims, such as salary arrears, pension, deductions, and compensation, which were not part of the original suit.
7. The Respondent argues that these additions amount to a fresh cause of action that is now time-barred under Section 90 of the *Employment Act*, 2007, as more than three years have lapsed since the termination. The Respondent maintains that the application is an afterthought, brought after the matter had already been certified ready for hearing, and raises issues that could have been addressed during the hearing itself.
8. The Respondent states that the delay of over three years is inordinate and unjustified, and that allowing the amendment would prejudice their right to a fair and expeditious trial, undermine the finality of pleadings, and defeat their legitimate expectation that litigation should come to an end.
9. The Respondent argues that it has already filed its responses, prepared their defense, and the matter is ready for hearing, and allowing the amendment at this stage would require it to file fresh responses and would cause unnecessary delay. It further contends that the Claimant will not suffer any prejudice if the amendment is disallowed, as the dispute can still be fully addressed based on the original pleadings filed on 24<sup>th</sup> June 2022.
10. Accordingly, the Respondent maintains that, in the interest of justice, equity, and orderly proceedings, the application for amendment should be dismissed and the case should proceed to hearing on the basis of the existing pleadings.
11. Parties canvassed the application by way of written submissions, which have been duly considered.

### **Analysis and Determination**

12. The singular issue arising for determination is whether the Claimant/Applicant merits grant of leave to amend the Memorandum of Claim dated 24<sup>th</sup> June 2022.
13. Rule 34 of the Employment and Labour Relations Court (Procedure) Rules, 2024 provide thus on amendment of pleadings: -

“A party may amend pleadings before service or before the close of pleadings:  
Provided that after the close of pleadings, the party may only amend pleadings with, the leave of the Court on oral or formal application; and the other party shall have a corresponding right to amend pleadings.”
14. The general principle is that amendment of pleadings should be allowed provided that such amendments are necessary for determining the real questions in controversy between the parties, and do not occasion prejudice that cannot be compensated by costs. In *Central Kenya Ltd v Trust Bank Ltd* [2000] eKLR,, the Court of Appeal held that amendments should be freely allowed if they can



- be made without injustice to the other side, and that there is no injustice if the other party can be compensated by costs.
15. Similarly, in *Eastern Bakery v Castelino* [1958] EA 461, the Court stated that amendments should be allowed unless they would result in prejudice or injustice not compensable by costs, or where they introduce a completely new and inconsistent cause of action.
  16. In determining an application for amendment such as this, the Court is also obligated to consider the limitation of actions. In *Divecon Limited –v- Samani* [1995-1998] 1 EA, it was held that a court has no jurisdiction to extend time where a claim is statute-barred, and amendments cannot be used to revive a cause of action that is already time-barred.
  17. Further, in *Joseph Ochieng & 2 others Trading as Aquiline Agencies v First National Bank of Chicago* [1995] KECA 31 (KLR), the Court emphasized that amendments introducing a new cause of action after the expiry of the limitation period should not be allowed.
  18. The Claimant seeks to amend the Memorandum of Claim on the basis that the original pleading omitted the computation of the reliefs sought due to inadvertence. It is, however, clear that the proposed amendment introduces quantified claims for wrongful deductions made from the Claimant’s salary, accumulated pension claim, and an order on where the awards should be paid, which did not form part of the initial claim.
  19. From the material before the Court, the original claim already pleaded unlawful termination and sought reliefs arising therefrom, albeit without computation. To the extent that the amendment merely particularizes and quantifies reliefs flowing from the same cause of action, it would, in my view, fall within permissible amendments as contemplated in *Central Kenya Ltd v Trust Bank Ltd* (supra). However, the Respondent has raised a substantive objection and rightly so, that the amendment introduces new heads of claim, such as pension and deductions, that were not previously pleaded.
  20. It is not disputed that the termination giving rise to the claim herein occurred more than three years prior to the present application. Under Section 90, employment claims must be filed within three years. As held in *Divecon Limited v Samani* (supra) the Court lacks jurisdiction to entertain claims brought outside this statutory period.
  21. I conclude, therefore, that amendments that merely clarify, particularize, or quantify existing claims are permissible, while those that introduce new and distinct causes of action after the lapse of the statutory limitation period are impermissible.
  22. On the issue of delay, while the application has been brought over three years after filing the claim and after the matter was certified ready for hearing, delay alone is not fatal if the amendment is otherwise proper. The key consideration remains whether prejudice will be occasioned.
  23. In the final analysis, the Motion partly succeeds as follows: -
    - a. The Claimant is granted leave to amend the Memorandum of Claim only to the extent that the amendments clarify and particularize the existing claims, including computation of reliefs already pleaded.
    - b. Any proposed amendments introducing new causes of action or new heads of claim not pleaded in the original Memorandum of Claim are hereby disallowed.
    - c. The amended Memorandum of Claim shall be filed and served within 21 days of this ruling and upon payment of the requisite fees.



- d. The Respondent is granted corresponding leave to file an amended Response.
- e. The costs of the application shall be in the cause.

24. Orders accordingly.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
23<sup>RD</sup> DAY OF APRIL 2026.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Njenga h/b for Mr. Lempaa for the Claimant/Applicant

Ms. Kwang'a present for the Respondent

Ms. Esther S-C/A

