



**Mwangi v Kevian Kenya Limited (Cause E456 of 2022)
[2025] KEELRC 672 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 672 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E456 OF 2022
DKN MARETE, J
FEBRUARY 26, 2025**

BETWEEN

ANTONY NGARI MWANGI CLAIMANT

AND

KEVIAN KENYA LIMITED RESPONDENT

RULING

1. This is an application dated 18th March, 2024 and seeks the following orders of court;
 1. For the reasons stated in the Certificate of Urgency filed herewith, this Honourable Court be pleased to Certify this Application urgent and service of the same be dispensed with in the first instance.
 2. The Applicant herein be granted leave to amend its Statement of Defence dated 2nd September 2022 as set out in the Draft Amended Statement of Defence annexed to this Application.
 3. The aforesaid Draft Statement of Defence be deemed as duly filed.
 4. The costs of this application be in the Cause.
2. Which Application is made on the Grounds that:
 1. The Applicant's defence as it presently stands does not sufficiently controvert a pivotal aspect of the dispute between the parties which dispute goes to the question of unfair termination of the Respondent's employment.
 2. The intended Amendments shall therefore ensure that the litigation between the parties is conducted on the basis of all the matters the parties herein intend to rely on.



3. The intended amendments shall aid the Court in determining the substantive merits of the case without restricting it to the form of the action or proceedings thereby determining the issues in controversy conclusively.
 4. Indeed, the intended amendments better and more particularly plead the Applicant's defence to the allegations raised against it.
 5. Should the matter before this Honourable Court proceed without the intended amendments the Court shall proceed to determine the suit before it in the absence of a pertinent pleading that affects its Jurisdiction and merits of the Suit before it.
 6. No prejudice shall be suffered by the Respondent/Claimant would warrant the subjugation of the right of the Applicant to amend its Defence
3. This is grounded on the fact that the defence as it stands now does not adequately answer to the issues in dispute as presented. The intended amendment of the claim will also assist in a conclusive determination of the issues in dispute from a clear stand point than we are in today.
 4. Again, the Respondent/Applicant posits that the Applicant's defence as it presently stands does not sufficiently controvert a pivotal aspect of the dispute between the parties which dispute goes to the question of unfair termination of the Respondent's employment.
 5. The Claimant/Respondent filed Grounds of opposition in which he highlights the deficiency of the application seriatim. He intones that the application is an abuse of the process of court, illegal, frivolous and devoid of merit. It is also deemed an afterthought by the Respondent.
 6. Further, the Claimant/Respondent faults the application for having being filed after inordinate delay with the issues therein raised being belated. This delay is wholly to be blamed on the Respondent/Applicant's dalliance in the prosecution of the claim todate as follows;
 - a. The Memorandum of Claim was filed and dated on 28 June 2022 to which the Respondent entered appearance and subsequently filed a defence on 24 September 2022
 - b. That on 1 November 2022, the matter was slated for pre-trial, the Respondent sought for more time to comply, which request was granted.
 - c. That on 26th January 2023, the matter came up for Mention and both parties confirmed compliance.
 - d. However, at the request of the Respondent, the Claimant agreed to attempt mediation to attempt to settle the claim.
 - e. That at Mediation settlement was only to record on a partial agreement that the Respondent would issue a Certificate of Service to the Claimant.
 - f. On 19 September 2023, the matter was mentioned before the Honourable Justice D.K. Marete whereby the Partial Mediation Agreement was adopted and parues directed that the claim would be dispensed with by way of written submissions.
 - g. The Claimant herein proceeded to file and serve his submissions dated 19th October 2023.
 - h. That on 1 and 15th November 2023, on both dates, the Respondent sought for more time to file its submissions, which request was also allowed.



- i. On 22nd January 2024, the matter was mentioned yet again and the Respondent had still not filed its' submissions.
 - j. The Learned Judge proceeded to grant the Respondent an additional Two (2) weeks for it to file the submission.
 - k. On 28 February 2024, the Respondent still had not filed its submissions but intimated that the Respondent was willing to record a consent to settle the Claim. The Claimant in the spirit of good faith still indulged the Respondent but no proposal was offered.
 - l) Later, on 18 March 2024 when the matter was to be mentioned to confirm recording of the consent, the Respondent had filed the present application seeking to file an amended defence which does not disclose any new evidence.
7. The Respondent/Applicant buttresses his case by seeking to rely on authority of Order 8 rule 5 of the Civil Procedure Rules, 2010 which provides thus;
- For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and, on such terms, as to costs or otherwise as are just.
8. She also seeks to rely on authority of Eric Kennedy Okumu Ogola v Nation Media Group & another [2021] eKLR, where the Court allowed an application seeking to amend a pleading and stated as follows
- “it is this Court’s finding that under Article 50 of *the Constitution* of Kenya, 2010, the right to a fair trial cannot be derogated from, as it is accorded to every litigant equally.”
9. Further, she sought to rely on authority Kenya Commercial Bank v Nicholas Ombija (2009) eKLR where the court of appeal observed as follows;
- “Until Judgement is finally delivered, the proceedings are very much alive, entitling any party to even apply for amendment of pleadings before judgment.”
10. Overall, this application tilts in favour of the Claimant/Respondent. The application is agreeably an abuse of the process of court, frivolous and totally devoid of merit. It is undoubtedly an afterthought by the Respondent.
11. The application is tinted with a breach of the essential tenets of the rules of justice, procrastination and delay in the administration of justice and thereby is not sustainable. The applicant does not induce any iota of sympathy from this court. It does not compel an exercise of this court discretion in his favour. It must fail as a consequence of its various shortcomings.
12. I am therefore inclined to dismiss the application in order that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 26TH DAY OF FEBRUARY 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:



Miss Mwendwa holding brief for Marete instructed by Kithinji Marete & Company Advocates for the Respondent/Applicant.

Miss Kiiru holding brief for Loita instructed by Guandaru Thuita & Company Advocates for the Claimant/Respondent.

