



REPUBLIC OF KENYA



KENYA LAW
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Mathenge & 16 others v Youth Enterprise Development Fund (Cause E6544 of 2020) [2025] KEELRC 371 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 371 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6544 OF 2020
CN BAARI, J
FEBRUARY 13, 2025

BETWEEN

DANIEL MATHENGE & 16 OTHERS & 16 OTHERS CLAIMANT

AND

YOUTH ENTERPRISE DEVELOPMENT FUND RESPONDENT

RULING

1. Before Court is the Claimants/Applicants Motion application dated 7th December, 2023, brought pursuant to Rule 14 (6) of the Employment and Labour Relations Court (Procedure) Rules, 2016, wherein, they seek orders that:-
 - i. The Applicants be granted leave to amend their Memorandum of Claim dated 8th December 2020 as per the attached Amended Memorandum of Claim, and the same be considered as duly filed.
 - ii. The Honourable Court be pleased to make such further orders as it may deem just and expedient in the circumstances of the case.
 - iii. The costs of this Application be provided for.
2. The application is supported by the grounds on the face, and the affidavit of one Daniel Mathenge, the first Applicant herein. The basis of the application is that the Applicants herein, filed a Memorandum of Claim and an Application dated the 8th December 2020 seeking inter – alia interim status quo orders pending inter – parties hearing of the Application.
3. They aver that on 11th December 2020, the matter was heard ex - parte by Hon. Justice James Rika who ordered the Respondent to suspend implementation of Resolutions of its 76th Full Board meeting, which would result in reduction of the Applicants’ basic salaries pending interparties hearing of the Application.



4. That despite knowledge of the said Orders of Hon. Justice James Rika, the Respondent and its principal officers directed the Respondent's Payroll Officer, to make deductions to the Applicants' basic salary in clear contempt of the Orders of Hon. Justice James Rika of 11th December 2020.
5. The Applicants further aver that this matter was listed for hearing of the main suit on 1st November 2023, when the Respondent's counsel indicated to court that the Respondent in its 86th Full Board meeting held on 8th September, 2023, reinstated all the Claimants in their positions as had earlier been graded by the previous Board. They state further that no evidence of this assertion has been provided by the Respondent.
6. It is the Applicants' position that despite the purported reinstatement, the Applicants have not been paid withheld basic salaries from December 2020 to date, and have suffered loss as a result of the Respondent's unlawful withholding of part of their basic salaries, and now wish to seek payment of the withheld basic salaries together with damages in light of the alleged Respondent's resolutions of the 86th Full Board meeting which amount to part admission of the Claim.
7. That it is just and necessary to allow the Applicants amend their Memorandum of Claim, in order to bring to light the new developments in the matter, and make claim for the withheld salaries and damages.
8. The Respondent opposed the motion vide grounds of opposition dated 8th February, 2024. The Respondent states that the amendments that the Claimants seek to introduce are meant to seek payment and/or orders for settlement of dues which are illegal and unfair on the basis that:-
 - a. The Respondent's former CEO, irregularly and without requisite approvals directed the Respondent's then Human Resources Manager on 6th September 2019, to implement a new salary structure which had not been approved.
 - b. SRC had not approved the new pay structure and that the 67th Full Board meeting did not resolve to effect the pay increments.
 - c. The Claimants did not have valid promotion letters to warrant payment of salaries within the period effective December 2020 as they seek to be awarded through the amendments.
 - d. The monies which the Claimants seek to be paid, are remitted to the Respondent by the National Treasury and are normally spent by the Respondent as per authorization received from the National Treasury. That the National Treasury is not a party to these proceedings.
9. Parties sought to canvass the application by way of written submissions. Both parties filed submissions.
10. The rival submissions have been duly considered.

Analysis and Determination

11. The singular issue for determination is whether the Claimants/Applicants' motion merits grant of the orders sought.
12. The law allows parties to amend their pleadings at any time before pleadings close. After the close of pleadings, a party desiring to amend, can only do so with the leave of the court, and hence the instant motion.
13. Though amendment of pleadings is a discretionary power of the court, the general principles is that a party should be allowed to amend his/her pleadings to ensure that cases are decided on their merits and not on technicalities.



14. The Claimants/Applicants' contention is that their prayer to amend is premised on having been reinstated back to their positions within the pendency of this suit, and that despite the reinstatement, they have not been paid withheld salaries from December 2020 to date, and now wish to seek payment of the withheld basic salaries together with damages in light of the reinstatement.
15. The Respondent on its part, contends that the salary that the Claimants are seeking were awarded through irregular actions of the Respondent's Chief Executive Officer at the time, acting together with the Claimants and that the Claimants/Applicants are therefore seeking reliefs which are based on unlawful actions in contravention of the public service principles enshrined in Article 232 of *the Constitution*.
16. In the case of *Institute for Social Accountability & Another v Parliament of Kenya & 3 Others* [2014] eKLR, the Court held that the object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on.
17. The Respondent does not deny that the Claimants/Applicants were indeed reinstated back to its service after this suit was filed. Its only objection to the motion is that the Applicants are not entitled to the salaries they claim. The issues raised by the Respondent can only in my view, be raised at the hearing of the main claim.
18. When deciding whether or not to allow an amendment of pleadings, the court considers the time when the application was filed, the reason(s) for the amendment, whether the proposed amendment could cause undue prejudice to the parties, the fairness and justice of the case and the stage of the proceedings. (See *Central Kenya Ltd v Trust Bank Ltd & 5 others* [2000] eKLR).
19. Further, *Bullen and Leake & Jacob's Precedents of Pleading*, 12th Edition on amendment of pleadings, state as follows:-

“...power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action...”
20. It is clear from the record, that the amendment sought by the Claimants/Applicants is to introduce a relief that was not available to them at the time of filing suit, but which arises from the new development, to wit reinstatement of the Claimants. It is also evident that the amendment sought does not seek to alter the character of the suit.
21. Considering timeous filing of the application, the reason for the amendment which has been spelt out above, the fairness and justice of the case, I find the Claimants/Applicants' motion merited, and I grant the following orders: -
 - a. That the Applicants be and are hereby granted leave to amend their Memorandum of Claim dated 8th December 2020, and to do so within 21 days of this order
 - b. That the Respondent shall have corresponding leave to emend its response if need be, within similar period.



c. That costs shall be in the cause.

22. Orders accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
13TH DAY OF FEBRUARY, 2025.**

C. N. BAARI

JUDGE

Appearance:

Ms. Atsanga h/b for Mr. Washika for the Claimants/Applicants

Ms. Ngei present for the Respondent

Ms. Esther S - C/A

