



**Thiong'o v Unaitas Sacco Society Limited (Cause E098 of 2021)
[2025] KEELRC 272 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 272 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E098 OF 2021
L NDOLO, J
FEBRUARY 6, 2025**

BETWEEN

PENINAH WAIRIMU THIONG'O CLAIMANT

AND

UNAITAS SACCO SOCIETY LIMITED RESPONDENT

RULING

1. This ruling determines the Notice of Motion dated 18th October 2024, by which the Respondent seeks leave to amend its Memorandum of Response dated 28th April 2021.
2. The Motion is supported by an affidavit sworn by the Respondent's Chief Manager, Human Resource, Nephath Macharia Murimi, and is based on the following grounds:
 - a. The Respondent only recently supplied its Advocates with the Claimant's staff file, on 1st October 2024, when the matter last came up for hearing;
 - b. Upon review of the documents, which had been previously supplied to the Respondent's former Advocates, the current Advocate in conduct of the matter noted critical documents had been omitted from the Respondent's bundle of documents, and the same did not inform the Respondent's Response to the Claimant's Statement of Claim;
 - c. The amended Memorandum of Response will contain further and better particulars to enable a proper response to the Claimant's Statement of Claim and will facilitate a just determination of the dispute before the Court, in compliance with the overriding objectives set out in the [Employment and Labour Relations Court Act](#);
 - d. The failure to consider and include the said critical documents was an inadvertent mistake on the part of the Respondent's previous Advocates, which should not be visited on the Respondent;



- e. The amendment is necessary to enable the Court to effectually and completely adjudicate and settle all questions in dispute;
 - f. It is in the interest of justice that the application is allowed;
 - g. The Court has inherent powers to make orders as are necessary to meet the ends of justice;
 - h. The present application has been filed bona fides and no prejudice shall be occasioned to the Claimant should the Court grant the Respondent leave to amend its pleadings.
3. In his affidavit in support of the Motion, the Respondent's Chief Manager, Human Resources, Nephath Macharia Murimi depones that the Claimant filed her Statement of Claim dated 5th February 2021, upon which the Respondent filed a Memorandum of Response dated 28th April 2021.
 4. Murimi further depones that the firm of KWEW Advocates LLP came on record for the Respondent through a Notice of Change of Advocates dated 3rd November 2023, only a few days before the hearing scheduled for 7th November 2023. He adds that on 7th November 2023, the Advocates sought time to familiarise themselves with the matter.
 5. Murimi states that since receiving instructions to act for the Respondent, the Advocates on record had made several requests to the Respondent to be supplied with the Claimant's staff file.
 6. It is deponed that when the matter came up on 12th February 2024 and 7th March 2024, the Respondent had still not supplied the Claimant's file to its Advocates, which is said to have been largely missing.
 7. Murimi avers that the Claimant's file was only recently traced and supplied on 1st October 2024, when the Court adjourned the matter for the last time to allow the Respondent a final opportunity to file further documents.
 8. The Claimant opposes the Motion by her replying affidavit sworn on 10th December 2024. She terms the application as an effort by the Respondent to frustrate determination of her claim, which she filed in February 2021.
 9. The Claimant points out that the Respondent's Advocates have not availed the new documents said to have been supplied by the Respondent, for consideration. She stresses that the Respondent, as the employer, remains the custodian of all the relevant employment records and no reason has been advanced as to why the documents could not be not filed in time.
 10. The Claimant accuses the Respondent's Chief Executive Officer of persistent harassment and frustration, with the sole aim of destroying the Claimant's career.
 11. By its application, the Respondent seeks leave to amend its Memorandum of Response dated 28th April 2021, ostensibly because new documents have been found.
 12. In her written submissions dated 18th December 2024, the Claimant makes reference to the decision in *Amina Nyadzua Chara v Hantex Garments (EPZ) Limited* [2021] eKLR where this Court declined to grant leave for amendment of pleadings on account of inordinate delay.
 13. On its part, the Respondent relies on the Court of Appeal decision in *Mwakio v Kenya Commercial Bank* [1987] KLR where it was held that leave to amend pleadings ought not be denied unless the application is made in bad faith or the opposite party would suffer prejudice.
 14. The present application has been brought close to four years after filing of the Memorandum of Response and all the Respondent states is that there was an inadvertent mistake by its Advocate then on record. If the Respondent retained an Advocate who did not craft a proper defence or if the



Respondent itself failed to provide the required documents, that cannot be said to be an inadvertent mistake.

15. At any rate, the new documents, said to have occasioned the need for amendment have not been shown to the Court. Rather, what emerges from the proposed amendments is that the Respondent wishes to completely alter its line of defence, a move that reeks of bad faith.
16. In the circumstances of this case, I find no reason to exercise discretion in favour of the Respondent.
17. The application dated October 18, 2024 is therefore declined with costs to the Claimant.
18. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF FEBRUARY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Nyangena for the Claimant

Mr. Wasike for the Respondent

