



**Otieno v Kenya Medical Women Association (Cause 709 of 2018)
[2025] KEELRC 687 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 687 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 709 OF 2018
CN BAARI, J
MARCH 6, 2025**

BETWEEN

IRENE AKINYI OTIENO CLAIMANT

AND

KENYA MEDICAL WOMEN ASSOCIATION RESPONDENT

RULING

1. This ruling relates to the Respondent's Notice of Motion dated 27th October, 2024, brought pursuant to Sections 1A, 1B, 95 and 100 of the Civil Procedure Act, Order 50 rule 6, Order 1 rule 10, Order 7 rule 5, Order 8 rule 3 and Order 11 of the Civil Procedure Rules, Section 146 of the Evidence Act, Article 50 and 159 (1) and (2) (d) of the Constitution of Kenya, seeking the following orders: -
 - i. Spent.
 - ii. The Applicant/Respondent be granted leave to file and serve its original witness statements, supplementary list of witnesses, supplementary witness statements, supplementary list and bundle of documents it intends to rely on in its case out of time.
 - iii. This Honourable court grants the Applicant/Respondent leave to amend its Statement of Response dated 7th November 2018 as set out in the draft amended Statement of Response annexed thereto.
 - iv. This Honourable court be pleased to grant an order to amend the Statement of Response dated 7th November 2018.
 - v. This Honourable court be pleased to find the draft amended Statement of Response attached to this application deemed as duly filed and served upon payment of requisite court fees.
 - vi. Spent



- vii. This Honourable court be pleased to issue further or better orders as shall meet the ends of justice.
 - viii. Costs be in the cause.
2. The application is supported by grounds on the face thereof and the affidavit of Christine Sadia, sworn on 27th October, 2024.
 3. The Applicant/Respondent states that through its former firm of advocates M/s Rachier & Amollo LLP, it filed a Memorandum of Response, List & Bundle of Documents and List of Witnesses all dated 7th November, 2018 refuting the claims made by the Respondent/Claimant.
 4. That on 2nd July, 2024 following a disagreement of the Applicant/Respondent with its former firm of advocates, the Applicant/Respondent issued instructions to M/s Benedete, Valentine Law & Associates to take up the matter from its previous firm of advocate. It states further, that following the change of advocate, the firm of M/s Benedete, Valentine Law & Associates requested the previous advocates for the client's litigation file which contained the filed pleadings and court documents, but it was not until September 26, 2024 when the current firm of advocates received the same from M/s Rachier & Amollo LLP.
 5. The Applicant/Respondent states that it discovered that its former advocate M/s Rachier & Amollo LLP did not file a witness statement for the witness listed in its List of Witnesses dated 7th November 2018 contrary to Order 7 rule 5 of the Civil Procedure Rules 2010.
 6. It argues that it is a cardinal principle of justice that the mistake of an advocate should not to be visited on the client and that the court may do whatever is necessary to rectify the mistake if the interests of justice so dictate.
 7. That this court has inherent jurisdiction under the provision of Sections 1A and 1B of the *Civil Procedure Act* to invoke the principles of the overriding objectives to facilitate the just determination of proceedings.
 8. The Claimant opposed the motion vide grounds of opposition dated 2nd December, 2024, wherein, she argues that the motion is frivolous, incompetent incurably defective and bad in law. She further contends that the prosed amendments are superfluous and are only serve to delay the hearing and determination of the suit.
 9. It is the Claimant's position that the intended counter-claim is time barred.
 10. The Respondent/Applicant filed submissions on the motion. The Claimant sought to rely on her grounds of opposition enumerated herein above. The submissions have been duly considered.

Analysis and Determination

11. I have considered the motion, grounds, supporting affidavit, the grounds of opposition and the submissions by the Respondent. The sole issue for determination is whether the Respondent's motion has merit.
12. Order 8 Rules 3(1) and 5(1) of the Civil Procedure Rules, provides thus on amendment of pleadings:-
 1. Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.



2. 5. General power to amend [Order 8, rule 5:-
 - 1) 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.
13. The Respondent's case is that its former advocates did not file a witness statement for the witness listed in its list of Witnesses dated 7th November 2018, contrary to Order 7 rule 5 of the Civil Procedure Rules 2010. It avers further, that it issued instructions to M/s Benedete, Valentine Law & Associates to take up the matter following a disagreement with its former advocates.
14. It states that following the change of advocate, the firm of M/s Benedete, Valentine Law & Associates requested the previous advocates for the client's litigation file which contained the filed pleadings and court documents, but it was not until September 26, 2024 when the current firm of advocates received the documents and discovered that the witness statement was not filed and which they now seek leave to file and to amend their statement of response.
15. The claim herein was filed in May, 2018. The Respondent/Applicant filed a memorandum of response to the claim on 9th November, 2018 which they now seek to amend.
16. To say that the delay in filing the instant application for amendment is inordinate, is an understatement. I further note that the Claimant had had this matter listed for hearing three times before, but was adjourned at the instance of the Respondent, whose counsel later filed an application to cease acting, and which application was allowed on 28th November, 2023.
17. The general principle in amendment of pleadings is that courts will not allow an amendment where the amendment will cause injustice to the opposite party. Bramwell LJ in *Tildesley v. Harper* (1878), 10 Ch.D, court held that there is no injustice if the other party can be compensated by costs.
18. An amendment is similarly not allowable where it is not necessary to determine the real issues between the parties as well as where the application to amend is not made in good faith.
19. The Respondent/Applicant has without doubt been indolent in the handling of this matter. The court is however alive to the Respondent's right under Article 50 of the *Constitution* and seeing that it now has instructed a new firm of advocates to take charge of the matter. In *Eastern Bakery V. Castelino* [1958] E.A. 461, Sir Kenneth O'Conner, President of the then Court of Appeal for Eastern Africa, said at p. 462 held:-

“It will be sufficient ... to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side and that there is no injustice if the other side can be compensated by costs.”
20. Considering the circumstances of the case herein, nothing indicates that the Respondent's application was not made in good faith, and to help the court determine the real issues between the parties herein, I am inclined to allow the application in the interest of justice.
21. In whole, the motion succeeds and orders granted as follows: -
 - i. That the Applicant/Respondent be and is hereby granted leave to file and serve its witness statements, supplementary list of witnesses, supplementary witness statements, and the supplementary list and bundle of documents it intends to rely on out of time, and to do so within 14 days of this order.



- ii. That the Applicant/Respondent be and is hereby granted leave to amend its Statement of Response dated 7th November 2018, and to do so within 14 days of this order.
- iii. That parties to proceed and fix a date for hearing of the main suit on priority basis
- iv. Costs shall be in the cause.

22. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 6TH DAY OF MARCH, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Okoth present for the Claimant/Respondent

Mr. Ragot present for the Respondent/Applicant

Ms. Esther S - C/A

