



**Okello v Kenya Airways Limited (Cause 704 of 2019)
[2025] KEELRC 1644 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1644 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 704 OF 2019
CN BAARI, J
JUNE 5, 2025**

BETWEEN

DANIEL OKELLO CLAIMANT

AND

KENYA AIRWAYS LIMITED RESPONDENT

RULING

1. Before Court is the Claimant/Applicant’s Chamber Summons application dated 11th November, 2024, seeking inter alia, leave to amend the Statement of Claim in terms of the amended Statement of Claim dated 11th November 2024 and leave to reopen his case and give further testimony as well as adduce further evidence in terms of the supplementary list and Bundle of documents. It is his further prayer that his supplementary list and bundle of documents be deemed properly on record.
2. The Applicant states that there are omissions, errors and mistakes in his Statement of Claim and the pleading as currently framed do not capture the Claimant’s grievances and the real questions in controversy in the matter.
3. He avers that the proposed amendments are necessary for purposes of bringing clarity to the pleadings, and to determine the real questions in controversy between the parties herein.
4. It is the Applicant’s position that there has also been a change in the circumstances with regards to the subject matter, and the amendment is necessary in order to disclose as much as possible all the relevant facts in the matters.
5. The Applicant states that this application should be allowed to assist the Court to determine effectively the issues surrounding this suit on true and substantive merits. He states further that the application is made in good faith, and the Respondent stands to suffer no prejudice as it will have an opportunity to respond.



6. The Respondent opposed the application vide a Replying Affidavit sworn by one Moses Ombokh on 3rd December, 2024. The Respondent avers that pleadings in this matter closed on or about 12th March, 2020, and that the matter was heard on 15th November, 2022 when the Claimant/Applicant testified and closed his case.
7. It is the Respondent's position that the delay between 12th March, 2020 when pleadings in the matter closed, and 11th November, 2024, when the instant application was filed, is inordinate and unexplained.
8. The Respondent states that under the draft amended claim, the Claimant now seeks a new prayer for reinstatement. It avers that the Claimant was terminated on 22nd July, 2019, and that under Section 12(3)(vii) of the *Employment and Labour Relations Court Act*, an order for reinstatement can only be issued within 3 years of termination.
9. The Respondent states that the Applicant has not satisfied that conditions necessary for this Court to exercise its jurisdiction in his favour as to allow him to reopen his case and to file additional documents on account of inordinate delay that has not been explained by the Claimant/Applicant.
10. It avers that the Claimant has not demonstrated that the evidence he seeks to introduce could not have been obtained with reasonable diligence at the time of the hearing. It states further, that the Applicant has equally not shown how the new evidence will have an important influence in his case.
11. The Respondent states that the documents that the Claimant seeks to introduce were actually prepared by him on 7th August, 2024, and which he has now dated 2024, and hence could have been produced before the hearing.
12. It avers further, that the Claimant only seeks to expand the scope of his employment dispute to include all statement made before and after his termination on the Respondent's financial position and procurement processes.
13. The Respondent prays that the Claimant/Applicant's chamber summons be dismissed.
14. Parties canvassed the application by way of written submissions which have been duly considered.

Analysis and Determination

15. The issue for determination is whether the Claimant/Applicant merits the reliefs sought.
16. The Claimant/Applicant under the instant application, seeks leave of this Court to amend his Statement of Claim dated 23rd October 2019 and to introduce a new prayer for reinstatement. The Applicant also seeks to re-open his case and to file additional documents.
17. It is not in dispute that the Court has the discretion to allow a party to amend pleadings at any stage on such terms as to costs, and where the amendment is necessary to enable the Court determine the issues in controversy between the parties.
18. In the case of *Elimu Sacco Society v Alice Jepkemboi Rotich* (2015) eKLR, it was held that amendments are meant to bring out the real issues for determination and should generally be allowed unless there is prejudice to be occasioned to the opposing party.
19. The Respondent in opposing the application, contends that the amendments have not been timeously applied for and no reason for the delay has been given to the Court. It is the Respondent's position that these proceedings were commenced 6 years ago vide a Statement of Claim dated 24th October 2019,



and that pleadings herein, closed on 12th March, 2020 and the Claimant's case was heard and closed on 15th November 2022, and what was left was the hearing of the defence case.

20. The Respondent's further assertion is that the documents that the Claimant seeks to introduce were actually prepared by him on 7th August, 2019, and which he has now dated 2024, and hence could have been produced before the hearing.
21. The Applicant's position is that there has been a change in the circumstances with regards to the subject matter of his case, and the amendment is necessary in order to disclose as much as possible all the relevant facts in the matters.
22. The Court of Appeal in the case of [Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet](#) [2018] eKLR had this to say on delay:-

“The law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”
23. In my considered view, the Claimant/Applicant has not satisfactorily explained the delay in seeking the reliefs that he now seeks. The Court notes that as submitted by the Respondent, the pleadings in the matter closed way back in year 2020, and the Claimant/Applicant subsequently testified and closed his case on 15th November, 2022. The instant application thus comes exactly two (2) years after the Claimant/Applicant closed his case.
24. The Claimant/Applicant has also not rebutted the Respondent's assertion that the documents the Claimant seeks to now introduce, were in his possession and were prepared by him in the year, 2019. Further, a cursory look at the documents that the Applicant seeks to introduce, evidently show that his intention is fill gaps which came out during cross-examination.
25. In the case of [Raindrops Limited v County Government of Kilifi](#) [2020] eKLR also cited by the Respondent, the Court held that a Court will inter alia consider the following factors when considering an application to re-open a case and introduce new documents:
 - a. The plea for re-opening will be rejected, if there is inordinate and unexplained delay on the part of the applicant.
 - b. The proposed re-opening is not intended to fill gaps in the evidence of the applicant.
 - c. The applicant should demonstrate that the evidence he seeks introduce could not have been obtained with reasonable diligence at the time of the hearing of the case.
26. It then follows that the Claimant/Applicant's application does not meet the threshold espoused in the foregone decision, and therefore, Claimant/Applicant has not demonstrated valid and clear reasons upon which this Court can exercise its discretion in favour of allowing his prayers.
27. In the upshot, the instant application is hereby found devoid of merit and is dismissed.
28. Costs shall abide the cause.
29. Considering that this is a 2019 matter, parties are hereby ordered to take a date for the hearing of the Respondent's case on priority basis.
30. Orders accordingly.



SIGNED, DATED AND DELIVERED AT NAIROBI THIS 5TH DAY OF JUNE, 2025

C. N. BAARI

JUDGE

Appearance:

Mr. Daniel Okello, the Claimant/Applicant appearing in person

Mr. Angwenyi present for the Respondent

Ms. Esther S - Court Assistant

