



**Munguti v Machakos County Assembly Service Board (Cause
E726 of 2021) [2024] KEELRC 1461 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1461 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E726 OF 2021**

**J RIKA, J
JUNE 14, 2024**

BETWEEN

MATHEW MUANGE MUNGUTI CLAIMANT

AND

MACHAKOS COUNTY ASSEMBLY SERVICE BOARD RESPONDENT

RULING

1. The Claimant filed an application dated 27th November 2023, seeking leave to amend his Statement of Claim.
2. The application is founded on the affidavit of his Advocate, George Gitambo Onsombi, sworn on 27th November 2023.
3. Mr. Onsombi explains that the Claimant omitted some crucial prayers in his original Statement of Claim. It is important to amend the Statement of Claim, to bring before the Court, all the controverted issues.
4. A draft copy of the proposed Amended Statement of Claim, is exhibited, marked as ‘GGO1.’ Amendments relate to the Law Firm representing the Claimant and its address; compensation for unfair demotion; violation of the Claimant’s rights under Articles 47 and 236 of *the Constitution*; and, prayers for general and punitive damages for discriminatory deployment and unfair demotion of the Claimant.
5. The Respondent is opposed to the application, through an affidavit of the Acting Clerk to the Respondent, Denis Mutui, sworn on 23rd January 2024.
6. His position is that the amendments have been sought too late in the proceedings. The Claim was filed in 2021, and has been scheduled for full hearing on various occasions. The proposed amendments are



substantial, and may introduce new issues which could change the cause of action. Grant of leave will prejudice the Respondent.

7. Parties agreed on 25th January 2024, to have the application considered and determined, on the strength of their affidavits and submissions. The application was last mentioned before the Court on 21st February 2024, when the Claimant confirmed filing and service of his submissions.

The Court Finds: -

8. Rule 14[6] of the Employment and Labour Relations Court [Procedure] Rules, 2016, allows a party to amend its Pleadings before service or close of Pleadings. After close of Pleadings, amendment shall only be made with the leave of the Court, upon an oral or formal application. The other party has a corresponding right to amend its Pleadings. Rule 14 [7] allows the Court, to call for further details or supplementary Pleadings, where the original Pleadings do not adequately set out the controverted issues.
9. Rule 14 above therefore allows for amendment of Pleadings, before service, before and after closure of Pleadings. There is no bar to amendment of Pleadings, on account of the dispute having in the past, been scheduled for hearing.
10. The Court is satisfied that amendment is necessary, to bring before the Court all the controverted issues. There is no merit to the submission by the Respondent, that a new cause of action has been introduced or is likely to be introduced, through amendment. No prejudice will be suffered by the Respondent.

It Is Ordered: -

- a. The Claimant is granted leave to amend its Statement of Claim, within 14 days of delivery of this Ruling.
- b. The draft Amended Statement of Claim shall be deemed duly filed and served upon payment of the requisite filing fees.
- c. The Respondent may file and serve an Amended Statement of Response, within 28 days from the date of the Ruling.
- d. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14TH DAY OF JUNE 2024.

JAMES RIKA

JUDGE

