



Seafarers Union of Kenya v Ramadhan & 2 others; Registrar Of Trade Union (Interested Party) (Cause E057 of 2023) [2024] KEELRC 1574 (KLR) (20 June 2024) (Ruling)

Neutral citation: [2024] KEELRC 1574 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E057 OF 2023**

**M MBARÚ, J
JUNE 20, 2024**

BETWEEN

SEAFARERS UNION OF KENYA CLAIMANT

AND

ATIE SWALE RAMADHAN 1ST RESPONDENT

JOHN HUSSEIN ZAPPA 2ND RESPONDENT

MATARI MWINYI MARARI 3RD RESPONDENT

AND

REGISTRAR OF TRADE UNION INTERESTED PARTY

RULING

1. The claimant filed an application dated 25 April 2024 seeking leave to amend the claim herein and that the draft amended claim be deemed as properly filed upon payment of the requisite fees. The application is supported by the affidavit of Stephen Ojiambo Owaki the 1st intended plaintiff.
2. In his Supporting Affidavit, Owaki avers that his affidavit is filed on his behalf, the 2nd and 3rd intended claimants. Following the ruling delivered on 14 March 2024, it is necessary to amend the claimants herein. The amendments sought are necessary for determining the real issues in controversy between the two factions who all purport to have conducted legitimate elections. Unless leave is granted to allow the amendments, the ends of justice will not be met. There will be no prejudice to the respondents if the intended claimants are allowed to amend the claim.
3. In reply, the respondents filed the Replying Affidavit of the 1st respondent, Atie Swaleh Ramadhan who avers that he has the authority to respond to the application. That the application is defective and a waste of court time and should be dismissed. The plaintiff [claimant] is a non-profit organization registered under the *Labour Relations Act* with its organs and structures.



4. The applicant has failed to disclose how he is related to the claimant or respondent to necessitate the instant application. The court cannot enjoin parties to the suit without knowing the relationship. The claimant is a trade union, the applicant cannot act, appeal, plead or make an affidavit on the claimant's behalf and the application should be dismissed with costs.

Both parties attended and filed written submissions.

Determination

5. The general principle where the amendment to pleadings is requested before judgment is to be allowed. The court will normally allow parties to make such amendments as may be necessary for determining the real questions in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, no new or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side. See *Institute For Social Accountability & another v Parliament of Kenya & 3 others* [2014] eKLR.
6. Rule 14 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* allow parties the opportunity to amend pleadings before pleadings close. However, where a third party is seeking to amend pleadings to be included in a suit, Order 8 Rule 3 of the *Civil Procedure Rules* provides for amendment of pleadings with leave of court as follows;
 - (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.
7. Further, Order 8, rule 5 gives the court the general power to amend pleadings;
 - 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.
8. However, amendment to pleadings should not be allowed to commence a new cause of action. That should be addressed separately and on the merits.
9. In this case, the applicant for the plaintiffs seeks to amend the plaint. The application is supported by Stephen Ojiambo Owaki who avers that;

I am the 1st intended plaintiff herein thus competent to swear this affidavit.
10. The claim is filed by the Seafarers Union of Kenya. There are no other claimants or plaintiffs.
11. In the attached Amended Plaint, the noted plaintiff is the Seafarers Union of Kenya. The applicant defines the parties to include;

The plaintiff is the Union of All Seafarers in Kenya...

The 1st defendant is a male adult ...

The 2nd defendant is an adult male ...

The 3rd defendant is a limited liability company registered in the ...

The interested party is the body mandated to oversee the running of trade unions in Kenya. ...

What then is the amendment sought by the applicant?



12. That the orders sought in the plaint be amended concerning the elections held on 21st June 2023. That the registration of the defendants as the officials of the Seafarers Union of Kenya by the Registrar of Trade Union was contrary to the Constitution of the union.
13. As outlined above, the key principle for allowing the amendment to pleadings is to correct 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.
14. The claimant herein is a registered trade union regulated under the Labour Relations Act, 2007. The applicant and person of Stephen Ojiambo Owaki does not define himself or the interest he seeks to address in these proceedings through an amendment to the claim by the claimant, Seafarers Union of Kenya. Is he the general secretary? Is he an official thereof? Is he a member? Or in what capacity does he wish to amend the pleadings herein?
15. Without clarity to these questions, whether as a respondent or interested party, to be allowed to come in and make amendments to the claim herein would not meet the ends of justice, even where amendments should be freely allowed, the applicant must demonstrate the inherent interests to be gone into by the amendment. It cannot be open to anybody to come into proceedings and seek amendments. The claimant as the entity in court is represented by its registered officials, returns are to be found with the interested party, the Registrar or Trade Unions.
16. The application before the court is devoid of any merit. None is discernible by the court.
17. Accordingly, the application dated 24 April 2024 is hereby dismissed. The applicant, Stephen Ojiambo Owaki to pay the claimant, the Seafarers Union of Kenya and the respondents Kshs 20,000 in costs to be shared equally between the parties.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 20TH DAY OF JUNE 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

