



Nyaga v Langfields Systems Limited & another (Employment and Labour Relations Cause 262 of 2017) [2024] KEELRC 13514 (KLR) (13 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13514 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 262 OF 2017
AN MWAURE, J
DECEMBER 13, 2024**

BETWEEN

TIMOTHY KINYUA NYAGA APPLICANT

AND

LANGFIELDS SYSTEMS LIMITED 1ST RESPONDENT

KENYA POWER & LIGHTING COMPANY LTD 2ND RESPONDENT

RULING

1. The Claimant/Applicant filed a Notice of Motion dated 20th March 2024 seeking for orders that:
 1. This Honourable Court do allow the Claimant/Applicant to file the amended Statement of Claim out of time and the same to be deemed as filed and served
 2. Costs of the application to be provided for.

Claimant/Applicant's case

2. The Claimant/Applicant avers that there were some errors to the Statement of Claim and filed an application dated 22nd June 2022 for leave to amend the Statement of Claim and so prays the same to be deemed as filed and served.
3. The Claimant/Applicant avers that when the ruling on the application was delivered on 31st July 2022, the counsel misunderstood the court's orders regarding the timelines for filing the amended Statement of Claim.
5. The Claimant/Applicant avers that upon sending his clerk to fix the matter for mention, the court had directed that the amended Statement of Claim be filed within 14 days.



6. The Claimant/Applicant avers that he filed the said amended Statement of Claim thereafter and this Honourable Court has discretion to extend time to meet the interest of justice.
7. The Claimant/Applicant avers that he communicated via message to the 1st and 2nd Respondent's counsels conceding to the filing the Amended of Statement of Claim but the communication did not reach the counsels as he had lost his phone.

1st Respondent's case

8. In opposition to the application, the 1st Respondent filed a replying affidavit dated 20th April 2024.
9. The 1st Respondent avers that the court granted the Claimant/Applicant leave to amend the Statement of Claim within 7 days, but 8 months later, still did not compile.
10. The 1st Respondent avers that it will be prejudicial as the Claimant/Applicant was not interested in the amendments.
11. The 1st Respondent avers that the matter is part-heard and the amendments are introduced midway through the hearing.
12. The 1st Respondent avers that the application is a disguised attempt to introduce new issues out of time which is time-barred as per section 90 of the *Employment Act*.
13. The 1st Respondent avers that the introduction of the amendments will change the suit since the claimant/Applicant's witnesses have already testified.

2nd Respondent case

14. The 2nd Respondent also opposed the application vide a replying affidavit dated 12th April 2024.
15. The 2nd Respondent avers that the application is frivolous, incompetent, and an abuse of the court process.
16. The 2nd Respondent avers that the claimant was directed by the court to file the amended Statement of Claim within seven days but failed to adhere to the ruling.
17. The 2nd Respondent avers that the instant application is filed eight months after the ruling seeking to file the amended Statement of Claim.
18. The 2nd Respondent avers that there is no proof of communication that the Claimant/Applicant tried to reach out to him and the 1st Respondent.
19. The 2nd Respondent avers that allowing the application will be prejudicial as the claimant does not want the litigation to come to an end.
20. The 2nd Respondent avers that the Claimant/Applicant was given numerous opportunities to amend the Statement of Claim and if allowed it will deny the Respondents their legitimate defence of limitation.
21. The 2nd Respondent avers that the application lacks merit and therefore needs to be dismissed.
22. The 2nd Respondent avers that in the event the application is allowed, it prays for costs.



Claimant/Applicant's submissions

23. The Claimant/Applicant submitted this Honourable Court has the discretion to extend time to file the amended Statement of Claim.
24. The Claimant/Applicant submitted that the nature of the amendment is merely arithmetic and not valid proof of the claim. The Claimant/Applicant further submitted the need to prove his case through cross-examination. Ultimately, the court may allow the claim after reviewing evidence and arguments from both parties.
25. The Claimant/Applicant relied on Article 159(1)(d) of *the Constitution* which provides that justice shall be done without undue regard to procedural technicalities.
26. The Claimant/Applicant also relied on the cases of *Opele V Biometric Technology and 3 others (2022) KEELRC 3778* the court allowed the application and sustained the amendment of the claim though filed out of time and *Central Kenya Limited V Trust Bank Ltd and 45 Others (2000) eKLR* the court held that amendments should be freely allowed, and at any stage proceedings and the length of the amendment or delay should not determine whether to allow it and determining factor should be whether the amendments are necessary for the determination of issues by the court.
27. In conclusion, the Claimant/Applicant urged this Honourable Court to allow the application.

1st Respondent's submissions

28. The 1st Respondent submitted that the Claimant/Applicant application is disguised to file the amendment out of time in a part-heard case.
29. The 1st Respondent submitted that the cause of action arose on 3rd October 2014, and the claim was initially filed on 21st June 2017.
30. The 1st Respondent also submitted that under section 90 of the *Employment Act*, work injury claims must be filed within three years from the date the cause of action arose.
31. The 1st Respondent further submitted that since the limitation period ended on 4th October 2017, any new claims are time-barred, and amendments cannot remedy this.
32. The 1st Respondent submitted that the Claimant/Applicant's application seeks to introduce new claims in a part-heard matter after the limitation period expired as there is no provision in the *Employment Act* or *Limitation of Actions Act* for extending the time to file such claims beyond the limitation period.
33. The 1st Respondent submitted that the defect cannot be cured, and that an amendment will not rectify this fatal flaw.
34. The 1st Respondent relied on several authorities in support of the application for an amendment to the statement of claim and limitation of time.
35. The 1st Respondent submitted that the application is an afterthought and an abuse of the court process and thus urged this Honourable Court to dismiss the application with costs.

2nd Respondent's submissions

36. The 2nd Respondent submitted that the application lacks merit and is an abuse of the court process, undermining the principles of the rule of law and justice. The 2nd Respondent argues that the



application is a mischievous attempt to complicate the court process and urged the court to dismiss it with costs, ensuring justice is served in a just, expeditious, and proportionate manner by declaring the application unmerited.

37. The 2nd Respondent relied on the case of Judicial Review 2 of 2017 Republic V National Government Constituency Development Fund Board & Another (2017) eKLR where the court stated that the term “Oxygen Principle” comes from the double O’s in “Overriding Objectives.” The court cited the case of Hunker Trading Company Limited V Elf Oil Kenya Limited, the *Appellate Jurisdiction Act* (Sections 3A and 3B) and section 1A of the *Civil Procedure Act* to emphasize the goal of resolving civil disputes in Kenya expeditiously and proportionately.
38. The 2nd Respondent submitted that the application seeks to unnecessarily prolong proceedings, violating the “Oxygen Principles.” The Claimant/Applicant, advocate, Mr. Mshindi, was present during the virtual ruling on 31st July, 2023, regarding 22nd June, 2022, application. The court ordered the Claimant/Applicant to file the amended Statement of Claim within seven days, which he did not contest.
39. The 2nd Respondent submitted that the application should not be heard as it was filed out of time after 8 months after the delivery of the ruling.
40. The 2nd Respondent submitted that the ruling was always available at the Court Registry, and the Claimant could have obtained a copy for clarification. The 2nd Respondent submitted that the Claimant/Applicant is guilty of negligence in this regard and cannot ask the court to exercise discretion and delay proceedings to the detriment of other parties due to his inaction.
41. The 2nd Respondent relied on the case of Gitau V Kenya Methodist University (Kemu) [2021] KEHC 322 KLR where the court cited the case Kings Bench in Rockey’s Case {1770 (98) ER 327 where the concept of the discretion granted to courts of law to extend time for parties was cited as follows:

“Discretion is a science not to act arbitrarily according to men’s will and private affection: so the discretion which is exercised here is to be governed by rules of law and equity which are to oppose, but each, in its turn, to be subservient to the other. This discretion, in some cases, follows the law implicitly, in others or allays the rigour of it, but in no case does it contradict or overturn the grounds or principles _ thereof, as has been sometimes ignorantly imputed to this Court. That is a discretionary power, which neither this nor any other Court not even the highest, acting: in a judicial capacity is *the constitution* entrusted with.”
42. The 2nd Respondent contended that the Honorable Court cannot grant the Claimant/Applicant additional time to file the amended Statement of Claim, as they have had sufficient opportunity to do so. Although the Claimant allegedly misunderstood the ruling from 31st July, 2023, it is surprising that they waited nearly eight months before attempting to schedule a mention date, especially considering the age of the claim.
43. The 2nd Respondent relied on the case of Nicholas Kiptoo Arap Korir Salat V Independent Electoral and Boundaries Commission and Others [2014] eKLR the Supreme Court set out the considerations that guide the court in exercising its discretion in cases of this nature which includes:
 - “(1) Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the court.
 - “(2) A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court.



- (3) Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis.
- (4) Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the court.
- (5) Whether there will be any prejudice suffered by the respondent if the extension is granted.
- (6) Whether the application has been brought without undue delay; and
- (7) Whether uncertain cases, like election petition, public interests should be a consideration for extending time.”

44. The 2nd Respondent submitted that the Claimant/Applicant has not presented a valid reason for extending time and despite having multiple opportunities, the Claimant/Applicant has caused undue delays. The 2nd Respondent submitted that granting this application would prejudice the 2nd Respondent by undermining their legitimate limitation defence. Therefore, the application should be dismissed with costs.

Analysis and determination

45. The issue of determination is whether this Honourable Court should extend time to file the amended Statement of Claim out of time.
46. In *Katiba Institute V Attorney General and 9 others* [2021] KESC 25 (KLR) the Supreme Court cited *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* (Supra) the court set out the principle of guiding principles for extension of time.
47. In this instant case, the Honourable Court delivered a ruling on 31st July 2022 and granted leave to the Claimant/Applicant to file the amended Statement of Claim. The purpose of the amendment was to correct an arithmetic error and claimed was not aware of the timelines for filing the said amended Statement of Claim. Yet the Respondent states the Claimant’s counsel was present during the ruling in any event this was his application and it was his duty to follow up the Ruling.
48. The Respondents argument was that the matter was part-heard hearing having commenced on 21st July 2021. The Claimant/Applicant’s counsel could have sent his clerk to peruse and read the order issued. It is noteworthy the application before the court was filed eight months after the ruling was delivered, which shows indolency on the part of the applicant.
49. Rule 34 of the Employment and Labour Relations Court (Procedure) Rules, 2024 provides as follows:

“A party may amend pleadings before service or before the close of pleadings provided that after the close of pleadings, the party may only amend pleadings with the leave of the Court on oral or formal application, and the other party shall have a corresponding right to amend its pleadings.”
50. In *Central Bank of Kenya Ltd V Trust Bank Ltd* (Supra) where the Court of Appeal stated that the only considerations to be taken by the court in an application for leave to amend are:
 - (i) Prejudice to the other parties;
 - (ii) Whether the amendments would unduly delay the resolution of the issue in controversy between the parties;



- (iii) Whether the amendments are necessary for the just determination of the suit.
 - (iv) That delay is not a ground for declining leave to amend unless the delay would prejudice the other parties.
51. The court has considered the history of this suit. The claim was first filed on 20th June 2017. The claimant applied to amend the claim to correct arithmetic error. This was ruled on 31st July 2023 and the court granted him leave to amend the same within seven days.
52. The same was not filed and no convincing reasons are given to the court why the amended claim which he had indicated was annexed to the application was not filed all the while.
53. Now this application was filed on 20th March 2024 asking for leave once again to file the amended memorandum of claim out of time.
- The court finds such laxity inconveniences the parties not to mention it wastes a lot of time for the court. This is a case that should have been finalised along time but instead about seven years or so down the line from the time the suit was filed the case is still dragging on with various application and others. The court will not be a party to aid an indolent litigant.
54. There is no merit demonstrated why this application should be granted. The same is dismissed with costs to the Respondent.
55. If the parties do not set the case for hearing on or by 30th January 2025 the same will be dismissed without any further ado. The same to be mentioned on 30th January, 2025 to confirm compliance.

Order accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAKURU THIS 13TH DAY OF DECEMBER, 2024.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

ELRC CAUSE NO. 262 OF 2017 RULING PAGE 17 OF 17

