



**Muturi v Kenya Forestry Research Institute (Cause E6522 of 2020)  
[2024] KEELRC 13333 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13333 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E6522 OF 2020  
L NDOLO, J  
DECEMBER 5, 2024**

**BETWEEN**

**DR. GABRIEL MUKURIA MUTURI ..... CLAIMANT**

**AND**

**KENYA FORESTRY RESEARCH INSTITUTE ..... RESPONDENT**

**RULING**

1. This ruling determines the Notice of Motion dated 17<sup>th</sup> May 2024, by which the Claimant seeks leave to amend his Memorandum of Claim dated 30<sup>th</sup> November 2020.
2. The Motion is supported by the Claimant's own affidavit and is based on the grounds that:
  - a. The Claimant is entitled to apply for and obtain orders from the Court;
  - b. The intended amendment is being pursued in good faith to do justice to the parties;
  - c. The intended amendment is aimed at concisely bringing out the Claimant's case and the reliefs sought;
  - d. The claim is yet to be set down for hearing;
  - e. The proposed amendment shall facilitate the just, expeditious, efficient and proportionate resolution of the dispute between the Claimant and the Respondent;
  - f. This Court has jurisdiction to grant the orders sought by the Claimant and has authority to order amendment of pleadings on its own motion.
3. The Respondent opposes the application by a replying affidavit sworn by its Corporate Secretary and Legal Officer, Philip M. Kichana on 19<sup>th</sup> July 2024.
4. Kichana opposes the proposed amendment on account of the following:



- a. There is inordinate and inexcusable delay in bringing the amendment, which the Claimant has not explained at all;
  - b. The Claimant is introducing an inconsistent cause of action in the draft amended Memorandum of Claim, without any explanation;
  - c. The Claimant is trying to be evasive regarding his role in the project which was well documented in the original claim, by striking out paragraphs 4, 12 and 18. The Claimant is therefore trying to run away from the role he played in the project;
  - d. The amendment will cause injustice to the Respondent and thus should not be allowed;
  - e. The Claimant has made numerous admissions which were in tandem with the evidence on record and now seeks to run away from those admissions through the draft amended claim;
  - f. The draft amended claim has materially altered the claim to the detriment of the Respondent;
  - g. The amendment has not been done in a procedural manner and will cause confusion;
  - h. The draft amended claim does not conform to the requirements of Order 8 Rule 7 of the Civil Procedure Rules.
5. The Claimant swore a further affidavit on 14<sup>th</sup> August 2024, asserting his right to amend his pleadings at any point before judgment. He states that there has been no attempt to subvert the course of justice on his part and denies the accusation by the Respondent that he is being evasive.
  6. The Claimant further depones that the Respondent has not disclosed what injustice or detriment the proposed amendment would cause it. The Claimant adds that the Respondent does not state how the amendment has materially altered the claim.
  7. On the alleged procedural errors in the amendment, the Claimant states that errors will only be considered prejudicial if they lead to lack of clarity, preventing the Court from discerning the cause of action or the Respondent from crafting a response.
  8. The window for amendment of pleadings in this Court is provided by Rule 34 of the Employment and Labour Relations Court (Procedure) Rules which provides as follows:
    34. A party may amend pleadings before service or before 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.
  9. In his written submissions dated 1<sup>st</sup> October 2024, the Claimant referred to the Court of Appeal decision in *St. Patrick's Hill School Limited v Bank of Africa Kenya Limited* [2018] eKLR where the principles for granting of leave to amend pleadings were settled as follows:
    - a. The power of the court to allow amendments is intended to determine the true substantive merits of the case;
    - b. The amendments should be timeously applied for;



- c. The power to amend can be exercised by the court at any stage of the proceedings;
  - d. As a general rule, despite the length of delay, if the amendment is sought in good faith, it ought to be allowed, provided that costs can compensate the other side;
  - e. The plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on limitation of action, subject to the power of the court to still allow an amendment notwithstanding the expiry of the period of limitation.
10. From the record, the Claimant seeks to amend his claim more than three (3) years after its filing. No explanation has been offered for the delay, which in my view, is inordinate.
  11. Additionally, a perusal of the proposed amended claim demonstrates that the Claimant is in effect changing the character and content of his cause of action, by striking out major paragraphs and leaving a shell of the original claim. Again, no credible explanation has been given for this drastic action.
  12. On the whole, I have formed the opinion that the Claimant's application has not been brought in good faith nor is it geared towards aiding determination of the true substantive merits of the dispute.
  13. The application dated 17<sup>th</sup> May 2024 is therefore dismissed with costs in the cause.
  14. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 5<sup>TH</sup> DAY DECEMBER 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Amukhale for the Claimant

Mr. Odukenya for the Respondent

