



**Wario v Youth Enterprise Development Fund Board (Cause
2406 of 2012) [2023] KEELRC 404 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 404 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2406 OF 2012
BOM MANANI, J
FEBRUARY 16, 2023**

BETWEEN

UMURO WARIO CLAIMANT

AND

YOUTH ENTERPRISE DEVELOPMENT FUND BOARD RESPONDENT

RULING

1. This is a claim for *inter alia*, compensation for alleged improper refusal by the Respondent to renew the contract of service between the parties. It is the Claimant's case that he was entitled to renewal of his contract once it came to an end. That however, the Respondent's Board exercising imaginary powers, declined to renew the said contract. And hence the suit for wrongful termination.
2. The Respondent has resisted the claim. It is the Respondent's case that as the Claimant's contract came to an end, he was advised that it will not be renewed. That the Respondent's Board had powers to recommend the renewal or non-renewal of the said contract. That in communicating its decision not to renew the contract, the Board was acting within its mandate.

Application to Amend

3. By the application dated October 11, 2022, the Claimant has moved the court to amend the Statement of Claim in terms of the attached draft amended Statement of Claim. The application is supported by the affidavit dated October 11, 2022 sworn by the Claimant.
4. The Respondent has opposed the request to amend the Statement of Claim. In the Respondent's view, the request is tainted with mala fides. The Respondent argues that the cause had been heard to conclusion and was pending delivery of judgment when the court file mysteriously disappeared. That shortly thereafter, the Claimant applied for reconstruction of the court file, an application that was allowed.



5. That before the disappearance of the court file, the Claimant had during the pendency of the matter come up with strange applications including one asking that the Respondent's witness be recalled to produce additional documents whilst the matter was pending delivery of judgment. The Respondent reads mischief in the events aforesaid and implies that the current application is a tool in furthering the Claimant's mischievous intentions.

Analysis

6. I have considered the application to amend the Statement of Claim and the response by the Respondent. Whilst it is true that the matter has gone through twists and turns that are less than desirable, I do not read any mischief in the application to amend the Statement of Claim. The law permits a party to an action that is pending resolution to apply to amend his pleadings.
7. It is true that the parties may have testified and closed their respective cases before the court file was misplaced. However, the effect of reconstruction of the file was that the trial had to commence afresh. In the premises, it remains open to either of the parties to apply to amend their pleadings.
8. The power to amend pleadings is often exercised liberally. A court should only decline a request to amend pleadings if the amendment is intended to introduce an entirely new and inconsistent cause of action or if the proposed amendment will have the effect of taking away a vested right such as the defense of limitation of actions. Absent these impediments, the court ought to permit such requests so long as the inconvenience caused to the opponent is compensated by an order for costs. This position is particularly so because bonafide amendments are usually meant to ensure the pleadings are appropriately framed and all issues that require determination brought on board to enable a wholesome resolution of the case.
9. I have looked at the proposed amendment. I do not see any attempts to introduce a new and inconsistent cause of action to the current suit. Similarly, there is no request to introduce a matter that is statute barred. In the premises, I am of the view that the application is merited.

Disposition

- a. The application to amend the Statement of Claim is allowed.
- b. The Claimant is given 14 days to amend and serve the amended Statement of Claim.
- c. The Respondent is granted 7 days upon service in b) above to file a response to the amended Statement of Claim.
- d. Costs of the application are granted to the Respondent.

Dated, signed and delivered on the 16th day of February, 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Applicant

.....for the Respondent

ORDER



In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

