



REPUBLIC OF KENYA



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**Amalgamated Union of Kenya Metal Workers v Shankar Electronics Limited
(Cause 663 of 2020) [2023] KEELRC 821 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 821 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 663 OF 2020
M MBARÚ, J
MARCH 28, 2023**

**BETWEEN
AMALGAMATED UNION OF KENYA METAL WORKERS CLAIMANT
AND
SHANKAR ELECTRONICS LIMITED RESPONDENT**

RULING

1. The claimant filed application dated August 17, 2022 seeking for orders that leave be granted to allow the claimant to file Further Amended Statement of Claim to enable them to incorporate facts and or to eliminate facts overtaken by events and in order to present the full claim for determination.
2. The application is made on the grounds that the respondent had earlier threatened to declare the claimant's members redundant and also caused pay cuts to some employees and leading to the filing of the claimant herein. The respondent has since abandoned the intention of redundancy but has continued to deduct salaries and the claimant's intention is to claim for the workers' salaries which should be paid in accordance with the CBA reached on September 30, 2019.
3. The claimant is aggrieved by the pay cuts and following a negotiated CBA for the period of 2020-2021 which is partly implemented, the respondent increased wages at 6% in each year and the claimant would like to have these matters addressed and hence seek to further amend the claim.
4. The application is supported by the Supporting Affidavit of Rose Omamo the general secretary of the claimant union and who avers that the cause of action has changed since filing the instant claim, and to enable the court appreciate the issues in dispute for determination, the claimant be allowed to make further amendments to the Statement of Claim to include the illegal deductions from wages and accrued interests at 14% per month flowing from the CBA which has not been fully implemented. The respondent will not suffer any prejudice if the application is allowed since there will be a chance to reply to the Further Amended Claim and the same heard on the merits.



5. In reply, the respondent filed the Grounds of Opposition that the application is in abuse of court process where the claimant has opted to litigate piecemeal and there is no draft Amended Claim attached to the affidavit to enable the court appreciate the veracity of the same. The claimant has already enjoyed leave to amend the claim and the current attempt is only meant to waste time and cause further costs upon the respondent and the instant application should be dismissed with costs.
6. The claimant filed Further Affidavit of Rose Omamo and attached the draft Further Amended Statement of Claim and that the matter should be heard on the merits.
7. Parties attended court and agreed to address the application by way of written submissions.
8. The claimant as the applicant submitted that under Rule 14(6) and (7) of the [%2020%20of%202011 Employment and Labour Relations Court \(Procedure\) Rules, 2016](#) mandate the court to allow orders sought to protect the applicant's interests and fully settle the matter. The intention of the claimant is to ensure employees' salaries are paid in accordance with the CBA reached on September 30, 2019. Under the CBA the wage was increased in two phases 2020 by 6% and 2021 by 6% but the respondent only increased the salary in the year 2020 but in September, 2020 reduced the wages and has not adjusted the same to date and the claimant seek to amend the claim to include the following;
 - a. 2020 deduction Kshs 208,566;
 - b. 2021 deductions Kshs 1,769,745; and
 - c. 2022 deduction Kshs 1,769,745
9. The claimant will also be seeking interests on these deductions at 14%. This is not a new claim as the respondent has alleged and the proposed amendments will allow the court to fully address the issues in dispute between the parties herein and the application herein should be allowed with costs as held in [David Muthui Ndegwa v Director of Public Prosecutions & another \[2022\] eKLR](#) amendment of pleadings should be allowed where there is no prejudice to the respondent.
10. The respondent submitted that the claimant filed claim on December 18, 2020 and the cause of action was alleged redundancy. Upon the respondent filing its response, on November 9, 2021 the claimant applied seeking leave to amend the claim and in a ruling delivered on June 2, 2022 the court allowed the application for the claimant to file the Amended Claim. Upon filing a Response on June 27, 2022 the claimant has again moved the court with the instant application.
11. In the case of High Court Petition No 328 of 2017 – [National Super Alliance Kenya v IEBC](#) the court held that the discretion vested in the court is depended on various circumstances which the court has to consider among them the need to do substantive justice to the parties.
12. In an application seeking to amend a claim, the court has discretion but such discretion should be fair to both parties as held in ELRC Suit No 5 of 2010 [Bernard Mwangi Nderitu & others v Ndiara Enterprises Limited](#) that where a claim is so slovenly that it would be impossible now to have a fair hearing if the proposed amendments were allowed, in the interests of justice such should not be allowed. The claim herein has since changed and should not allow further amendments as proposed and the application seeking to file Further Amended Claim should be dismissed with costs.

Determination

13. Under Rule 14 of the [Employment and Labour Relations Court \(Procedure\) Rules, 2016](#) (the Rules) the court is allowed the discretion to allow amendment of pleadings and the parameters are under Rule 14(7) that;



- (7) Where the Court, either on its own motion or on application by a party, is satisfied that a pleading does not adequately set out the particulars required by it, or for any other reason the Court requires clarification on any pleading or submission by a party, it may request the party to provide further details or file any supplementary pleading as it may consider necessary within such period as it may determine or specify and the party so requested shall provide them to the Court and the other party.
14. The court must be satisfied that the pleading(s) sought to be amended adequately set out the particulars required to be addressed or that there is/are sufficient reason(s) requiring clarification and hence the need for supplementary pleadings.
15. On June 2, 2022 the court delivered ruling following an application by the claimant seeking to amend the Memorandum of Claim and this was allowed.
16. The claimant has again moved the court seeking Further Amendment of the Statement of Claim.
17. The claimant admits that the genesis of the claim herein filed on December 18, 2020 was an intended redundancy which has since been addressed and overtaken by events. The orders sought in the original claim were with regard to declaration that the redundancy of unionisable employees of the respondent be found to be without justification, procedurally wrongful and amounting to unfair termination of employment.
18. In the Amended Statement of Claim dated November 9, 2021 the issues in dispute are those of unlawful redundancy and unfair termination of employment and the orders sought are similar as earlier sought with addition of injunctive orders with regard to reduction of wages and payment of terminal dues.
19. In the proposed Further Amended Statement of Claim, the issues in dispute are;
- a. Payment of salary arrears;
 - b. Refund of pay cuts from 2020 to date.
- The orders sought includes;
- a. An order compelling the respondent to fully comply with the CBA signed on September 30, 2019;
 - b. A declaration that the deductions made on claimants' members' salaries were unlawful;
 - c. An order compelling the respondent to pay the claimant the wrongfully deducted and/or withheld monies from its members' salaries
20. Amendment of pleadings as allowed under Rule 14 of the Court Rules is not meant to give an applicant a chance to address new and fresh claims but to allow for better particulars, clarifications and for good cause. It is not an opportunity to provide fresh claims which may have mutated from the original claim which is long addressed, overtaken by events or settled. To take that kind of route would be prejudicial to a respondent, who well aware of any suit that is long settled is returned back to court every time a new matter arises under the same employment relationship. That in my humble view, is not the purpose and intent of Rule 14 of the Court Rules.
21. The claimant admission that the original matter of intended redundancy has since been addressed, the new matters with regard to the CBA for the period of 2020-2021 now in issue, such cannot form a proper basis to amend the Amended Claim filed on March 23, 2022. To allow the mutation of the



claims each year based on the ongoing employment relationship between the parties would prejudice the respondent and result to great injustice.

22. The general principle that a court should freely allow amendment of pleadings as held in *John Nyagaka Osoo v Reynold Karisa Charo & 5 others [2021] eKLR* is also with the rider that parties to a suit have a right to amend their pleadings at any stage of the proceedings, albeit that right is not absolute, for it is dependent upon the discretion of the court. However, this discretion should be exercised judicially and in line with criteria set out under Order 8 Rule 3 of the *Civil Procedure Rules* and for this purpose, abide the provisions of Rule 14 of the Court Rules.
23. The import of an amendment to pleadings in aptly captured by the Court of Appeal in the case of *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited [2013] eKLR* that;

... as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that 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 Acts.”
24. In this case, the court finds the proposed Further Amendment to Statement of Claim if allowed will change the entire character of the claim as originally filed and amendments allowed, the admission that the original issue in dispute being intended redundancy has been addressed taken into account, the application herein is not justified.
25. Where a claim is settled, overtaken by events or abated, it cannot be revised or revived through an amendment of pleadings. Such must be addressed and settled before parties can address any new issue/ matter(s).
26. Accordingly, application dated August 17, 2022 is found without merits and is hereby dismissed with costs to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA THIS 28TH DAY OF MARCH, 2023.

M MBARŪ JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... and

