



Universities Academic Staff Union (UASU) v Council, Meru University of Science & Technology (MUST) & another; Inter-Public University Councils Consultative Forum of the Federation of Kenya Employers (IPUCCF) (Interested Party) (Cause 2 of 2021) [2023] KEELRC 1277 (KLR) (19 May 2023) (Ruling)

Neutral citation: [2023] KEELRC 1277 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE 2 OF 2021
ON MAKAU, J
MAY 19, 2023**

BETWEEN

UNIVERSITIES ACADEMIC STAFF UNION (UASU) CLAIMANT

AND

**COUNCIL, MERU UNIVERSITY OF SCIENCE & TECHNOLOGY
(MUST) 1ST RESPONDENT**

JAPHETH MAGAMBO 2ND RESPONDENT

AND

**INTER-PUBLIC UNIVERSITY COUNCILS CONSULTATIVE FORUM OF THE
FEDERATION OF KENYA EMPLOYERS (IPUCCF) INTERESTED PARTY**

RULING

1. This ruling relates to the claimants’ notice of motion dated November 1, 2022 seeking the following orders:-
 1. That the Honourable Court be pleased to grant leave to the claimant/applicant to amend the memorandum of claim herein in terms of the annexed draft memorandum of claim.
 2. That costs of this application be in the cause.
2. The application is supported by an affidavit sworn on even date by the applicants’ General Secretary Dr.Constantine Wasonga. In brief the affidavit deponed that the suit was filed against the wrong parties and there is need to amend the pleadings to remove the respondents and the interested party and substitute them with the correct party Meru University of Science and Technology (MUST); that the amendment will enable the court to effectively and completely adjudicate upon and settle all questions



- involved in the suit; that the amended does not go to the merits of the suit but only to correct the name and description of the 1st respondent; that it is in the interest of justice that the application be allowed; and that there will be no prejudice suffered by any party as a result of the amendment.
3. The respondent filed grounds of opposition on December 2, 2022. It opposed the application on grounds that;
 - a. There is no nexus in law between the intended respondent (MUST) and the applicant as they have no Collective Bargaining Agreement (CBA) between them.
 - b. There is therefore no cause of action arising from the matters pleaded in draft Amended claim against the intended Respondent.
 4. I have carefully considered the application, the grounds of opposition and the written submissions by the applicant. The issue for determination is whether the application meets the legal threshold for grant of leave to amend pleadings.
 5. Rule 14(b) of the *Employment and Labour Relations Courts Procedures Rules*, 2016 provides that:-

“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 or oral or formal application, and the other party shall have a corresponding right to amend its pleadings.”
 6. Further, order 8 rule 5 of the *Civil Procedure Rules* provides the threshold for amending a pleading. Thus;

“For the purposes of determining the real question in controversy between the parties, or 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 documents to be amended in such a manner as it directs and on such terms as to costs or otherwise as are just.”
 7. The above two provisions of the rules shows that parties generally have a right to amend their pleading before judgment subject to the court’s discretion. For the discretion to be exercised in favour of an applicant, it must be shown that the amendment is intended for;
 - a. Purposes of determining the real question in controversy between the parties to a suit, or
 - b. correcting a defect or error in the proceedings.
 8. In this case, the applicant contends that the amendment is intended to correct an error in the name of the responder in order to effectively and completely resolve the real issues in dispute. It sued the University Council and the Vice Chancellor instead of the University which has the necessary legal personality. There is no dispute that the University can sue or be sued in its own name. Proceeding with the suit against the present respondents without joinder of the University renders the suit defective and the court would be proceeding in vain. Consequently I am satisfied that the intended respondent is a necessary party to the suit and it will enable the court to effectively resolve the dispute.
 9. The other issue to consider is whether granting the leave would prejudice or cause injustice to the opposite parties. I am satisfied that they have not provided any evidence to show that they will suffer prejudice if the suit against them is terminated by the amendment. Even if there was any prejudice suffered, the same can be remedied by costs.



10. In view of the matters above, I allow notice of motion dated November 1, 2022 as prayed. Amendment to be done within 14 days. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NYERI THIS 19TH DAY OF MAY, 2023.

ONESMUS N. MAKAU

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 April 2020, this ruling 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.

ONESMUS N. MAKAU

JUDGE

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