



**Muraga v Kenyatta National Hospital (Cause 757 of 2018)
[2023] KEELRC 1064 (KLR) (4 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1064 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 757 OF 2018**

**L NDOLO, J
MAY 4, 2023**

BETWEEN

LYNETTE NJERI MURAGA CLAIMANT

AND

KENYATTA NATIONAL HOSPITAL RESPONDENT

RULING

1. By her Notice of Motion dated 1st November 2022, the Claimant seeks leave of the Court to amend her Memorandum of Claim dated 21st May 2018.
2. The Motion is supported by the Claimant's own affidavit and is based on the following grounds:
 - a. That the amendments sought are necessary for the determination of the real questions in controversy between the parties;
 - b. That the Memorandum of Claim dated 21st May 2018 does not contain the total sum of the Claimant's withheld salary during her period of interdiction from 10th November 2008 to 24th March 2010;
 - c. That the proposed amendments are not foreign or inconsistent with the subsisting cause of action which is centred around the unlawful withholding of the Claimant's half salary;
 - d. That the proposed amendments are further necessitated by information relevant for the fair determination of the real questions in controversy in this suit, which came to the Claimant's knowledge subsequent to the filing of the Claimant's Memorandum of Claim dated 21st May 2018;
 - e. That no prejudice will be occasioned to the Respondent;
 - f. That it is in the interest of justice that the orders sought herein are granted.



3. The Respondent filed Grounds of Opposition stating:
 - a. That the intended amendment seeks to introduce a claim that is time-barred;
 - b. That the application is thus bad in law and fatally defective;
 - c. That the application is frivolous, vexatious and an abuse of the court process.
4. The parties were directed to file written submissions. However, only the Claimant complied with these directions.
5. Rule 14 (6) of the *Employment and Labour Relations Court (Procedure) Rules* provides as follows:
 - (6) 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.
6. In her written submissions, the Claimant cited the decision in *Eastern Bakery v Castelion* [1958] EA, 461 where it was held that amendment to pleadings before hearing should be freely allowed, if there is no injustice to the other side.
7. The main ground on which the Respondent opposes the Claimant's application is that the proposed amendments seek to introduce a claim that is time-barred. The Respondent did not however provide any details to support this assertion.
8. Apart from filing Grounds of Opposition, the Respondent did not file a replying affidavit. As held in *Kennedy Otieno Odiyo & 12 others v Kenya Electricity Generating Company Limited* [2010] eKLR, Grounds of Opposition are general averments that do not rebut statements made in a supporting affidavit.
9. Without any elaboration by the Respondent, the Court is unable to decipher the basis upon which the statement that the Claimant's claim would be time-barred was made. This is an issue that can only be determined at the trial.
10. I have looked at the amendments the Claimant proposes to make to her Memorandum of Claim and without going into the merits of the claim at this stage, I find that the proposed amendments are necessary for the efficacious determination of the dispute before the Court. I also find that the Respondent will not suffer any prejudice if the amendment is allowed as the Respondent will have an opportunity to respond to the amended claim.
11. In the result, I allow the Claimant's application dated 1st November 2022. The attached amended Memorandum of Claim will be admitted upon payment of the requisite court fees. The Respondent will have fourteen (14) days after service, to respond to the amended claim.
12. The costs of the application will be in the cause.
13. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY OF MAY 2023

LINNET NDOLO

JUDGE

Appearance:



Mr. Mwinzi for the Claimant

Mr. Mugambi for the Respondent

