



**Musili v Prideinn Hotels Investments Ltd (Cause E055 of 2021)
[2023] KEELRC 1442 (KLR) (2 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1442 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E055 OF 2021**

**AK NZEI, J
JUNE 2, 2023**

BETWEEN

PHILIP MUOKI MUSILI CLAIMANT

AND

PRIDEINN HOTELS INVESTMENTS LTD RESPONDENT

RULING

1. The application before me is the Claimant’s Notice of Motion dated October 25, 2022, and is expressed to be brought under Order 8 Rules 3 and 5 and Order 51 Rule 1 of the Civil Procedure Rules, and Sections 1A, 1B and 3A of the Civil Procedure Act. The Claimant prays for orders:-
 - a. the Court be pleased to grant leave to the Claimant to amend the Memorandum of Claim dated May 31, 2021 in the manner shown on the annexed amended memorandum of claim.
 - b. that the Claimant, with leave of the Court, be allowed to reopen his case and be examined on the amended Memorandum of claim.
 - c. that costs of the application be in the main case.
2. The application is predicated on the Claimant’s supporting affidavit sworn on October 25, 2022 and filed herein. It is deponed in the said affidavit that the intended amendment sought will not cause any prejudice to the Respondent, but will enable this Court to adjudicate upon and settle all questions arising between the parties herein.
3. The application is opposed by the Respondent vide grounds of opposition dated December 9, 2022, whereby it is stated:-
 - a. that the application is frivolous, vexatious and an abuse of the Court’s process.
 - b. that orders sought are untenable in law.



- c. that the application is misconceived, erroneous and fatally defective.
- d. that the Claimant has not made out a case for the grant of the orders sought.
4. Both parties filed written submissions for and against the application, pursuant to the Court's directions in that regard, which I have considered.
5. It is worthy mentioning here that the Claimant's application herein was filed after the Claimant had testified and closed his case on September 26, 2022.
6. Rule 14(6) of the [Employment and Labour Relations Court \(Procedure\) Rules 2016](#) provides:-
- “
- “(6) 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 on oral or formal application, and the other party shall have a corresponding right to amend its pleadings.”
7. The Court of appeal outlined the principles applicable in amendment of pleadings in the case of [Elijah Kipng'eno Arap Bii v Kenya Commercial Bank Limited](#)[2013] eKLR as follows:-
- The law on amendment of pleadings in terms of Section 100 of the [Civil procedure Act](#) and Order VIA Rule 3 of the repealed Civil Procedure Rules under which the application was brought was summarized by this Court, quoting from Bullen and Laek & Jacobs's precedents of pleading -12th Edition, in the case of Joseph Ochieng & 2 Others v National Bank of Chicago Civil Appeal No. 149 of 1991 as follows:-
- “.....powers of the Court to allow amendment is to determine the true, substantive merits of the case, amendments should be timeously applied for; power to so amend can be exercised by the Court at any stage of the proceedings (including appeal stages); 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 if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts.”
8. The applicable principles on amendment of pleadings having been laid down as aforesaid, I have looked at the draft amended memorandum of claim annexed to the affidavit sworn in support of the application; and I have noted that all that the Claimant/Applicant seeks do so is to introduce two more Respondents, Prideinn Flamingo Beach Resort Ltd and Prideinn Hotels Restaurants Ltd. This will be tantamount to bringing suit against the two proposed Respondents. It has not been shown by the Respondent herein that the amendment will in any way prejudice it.
9. I have noted from the memorandum of claim originally filed herein that the Claimant alleges to have been unprocedurally dismissed from employment on March 17, 2021. Suit against the additional Respondents based on the already pleaded cause of action will not be statute barred by virtue of Section 90 of the [Employment Act](#). As to how three distinct entities can be sued in a case of an alleged unprocedural and unfair redundancy, this will be a matter of evidence or lack of it on the part of the Claimant.



10. Consequently, it is my finding that the Notice of Motion dated October 25, 2022 is merited, and I allow it in the following terms:-
- a. the Claimant is hereby granted leave to amend his Memorandum of Claim herein in terms of the draft amended memorandum of claim annexed to the application dated October 25, 2022.
 - b. the amended memorandum of claim shall be filed and served on all the named Respondents within fourteen (14) days of this Ruling.
 - c. the Respondent herein is hereby granted leave to amend its Response to the memorandum of claim within fourteen (14) days of being served with an amended memorandum of claim.
 - d. the Claimant is hereby granted leave to re-open his case.
 - e. costs of the application are awarded to the Respondent, to be agreed upon or taxed.
 - f. orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 2ND JUNE 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

..... **for Claimant**

..... **for Respondent**

