



**Wenani v Comply Industries Limited (Cause 745 of 2019)  
[2023] KEELRC 1657 (KLR) (6 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1657 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 745 OF 2019  
MN NDUMA, J  
JULY 6, 2023**

**BETWEEN**

**DANIEL MESUSWA WENANI ..... CLAIMANT**

**AND**

**COMPLY INDUSTRIES LIMITED ..... RESPONDENT**

**RULING**

1. The notice of motion application dated February 17, 2023 seeks for an order in the following terms:-
  1. Spent
  2. That this Honourable Court be pleased to grant leave to the Claimant to further amend the Memorandum of Claim dated November 6, 2019 and Amended on January 31, 2020 as per the Further Amended Statement of Claim annexed hereto.
  3. That the further amended memorandum of claim annexed hereto be deemed as having been duly filed upon payment of the requisite Court fees.
  4. That the respondent be at liberty to file a reply to the further amended statement of claim if need be.
  5. That costs of this application be in the cause.
2. The application is supported on grounds set out on the face of the application and the supporting affidavit of the applicant to wit that the applicant omitted by error essential particulars in the Statement of Claim. It is in the interest of justice that the application be allowed. The respondent will have opportunity to file amended response and so will not suffer any prejudice. The Draft amended Memorandum of Claim be deemed to be duly filed.



3. The application is opposed vide a replying affidavit of the respondent.
4. The Respondent deposes that the application before court has no merit. That the claim was filed on November 6, 2019 being almost four (4) years ago. The claim was mentioned in court on diverse dates and pleadings closed. The matter was then fixed for hearing of the main suit on the March 28, 2023. The matter came for hearing on the November 10, 2022 and the claimant did not suggest that he needed leave to file further documents or to amend pleadings. The claimant is now attempting to introduce fresh and exaggerated claims through fresh application despite the limitation period for filing further documents dated November 17, 2022 which were received under protest. The Respondent urges that the application be dismissed.

### **Determination**

5. The Court has carefully considered the proposed amendments to the memorandum of claim and notes that the suit was first filed on November 6, 2019. The Memorandum of Claim was amended on January 31, 2020 and the respondent filed amended reply to the Memorandum of Claim dated February 27, 2020.
6. The claimant filed this application on February 17, 2023 more than four (4) years from the time the claim was filed and about three (3) years from the time the Amended response to the amended Statement of Claim was filed.
7. The delay in bringing this application is inordinate and the intended amendments are intended to bring new claims more than three (3) years from the date the cause of action arose.
8. The intended amendments violate the limitation set out under Section 90 of the *Employment Act* and therefore the Court lacks jurisdiction to entertain the same being statute barred. The raft of special damages set out in the new paragraph 14(B) were clearly not pleaded in the initial Statement of Claim under the title particulars of special damages under paragraph 14.
9. The Court finds the intended amendments inappropriate and in violation of Section 90 of the *Employment Act*, and disallows the application with costs in the cause.
10. It is so ordered.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 6<sup>TH</sup> DAY OF JULY, 2023.**

**MATHEWS N. NDUMA**

**JUDGE**

### **Appearances**

Mr. Mwenesi for claimant

M/s Oteyo for respondent

Ekale: Court clerk.

