



**Style Industries Limited v Kasumba (Cause 1086 of 2018)
[2023] KEELRC 2143 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2143 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1086 OF 2018
NJ ABUODHA, J
SEPTEMBER 22, 2023**

BETWEEN

STYLE INDUSTRIES LIMITED CLAIMANT

AND

OLIVER KASUMBA RESPONDENT

RULING

1. By a Motion dated February 20, 2023 the respondent/applicant sought to amend his memorandum of response to include a counterclaim. The claimant objected to the proposed amendments contending particularly that the counterclaim sought to introduce matters that were statute barred and further that they did not fall within the jurisdiction of the Court.
2. The Court of Appeal in the case of *Central Kenya Limited -v- Trust Bank Limited (2000)2 EA 365* held that: -

' that a party is allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.'

Further in the case of *Eastern Bakery v Castelino (1958) 1 EA 461 (CAK)* the Court therein held that :

' It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before hearing should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs....the court will not refuse to allow an amendment simply because it introduces a new case....but there is no power to enable one distinct cause of action to be substituted for another, nor



to change, by means of amendment, the subject matter of the suit...the court will refuse leave to amend where the amendment would change the action into one of a substantially different character...or where the amendment would prejudice the rights of the opposite party existing at the date of the proposed amendment e.g by depriving him of a defence of limitation accrued since the issue of the writ...the main principle is that an amendment should not be allowed if it causes injustice to the other side.'

3. The Court has perused the draft amended statement of response and has noted that the amendment sought in the draft response are factual representation of events that may have, in the view of the applicant, transpired during the material time. They do not introduce any new cause of action or defence. The Court however does not hold the same view regarding the counterclaim. The respondent avers in the proposed Counterclaim that on November 1, 2017, after he had been terminated by the respondent, he got employed by a company known as Di-Lorenzo as head of production. According to him, the claimant maliciously commenced the present suit and served him with the Court papers at his new place of work. As a consequence, his new employer was not happy with the case against him. The respondent further alleged that as a result of the malicious suit, he got distracted from being creative and productive in his department which led to him being declared redundant by his new employer. The respondent sought by way of counterclaim, compensation for mental depression and compensation from the claimant for deterring him from using his talent in another competitive company.
4. The foregoing are matters which took place when employer-employee relationship had ceased between the claimant and respondent and even if the constituted actionable wrongs in law, this Court does not have jurisdiction to adjudicate over the same. Besides, the respondent has himself admitted that the cause of action pleaded was beyond the three years stipulated under section 90 of the *Employment Act*. This Court and the Courts superior to it has stated in several judgments that section 90 of the *Employment Act* is couched in mandatory terms hence whenever the period stipulated therein for bringing actions founded on the Act or contract of employment has lapsed, it cannot be extended.
5. In conclusion that application for amendment is partially successful to the extent that the amendments sought in the draft statement of response are hereby allowed. The proposed counterclaim is hereby disallowed on grounds of lack of jurisdiction and limitation of action as stipulated under section 90 of the *Employment Act*.
6. Cost of the application shall abide the outcome of the main suit.
7. It is so ordered

DATED AT NAIROBI THIS 22ND DAY OF SEPTEMBER, 2023.

ABUODHA JN

JUDGE

