



**Aluoch v Kenya Ports Authority & another (Cause E071 of 2022)  
[2023] KEELRC 3149 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3149 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E071 OF 2022  
AK NZEI, J  
NOVEMBER 30, 2023**

**BETWEEN**

**ALPHAEUS ALUOCH ..... CLAIMANT**

**AND**

**KENYA PORTS AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**DANIEL OGUTU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Application before me is the Claimant's Notice of Motion dated 25<sup>th</sup> May 2023 and expressed to be brought under Rule 14(6) of the *Employment and Labour Relations Court (Procedure) Rules* 2016, Order 51 Rule 1 of the *Civil Procedure Rules* and Section 3A of the *Civil Procedure Act*. The Claimant/Applicant seeks the following orders:-
  - a. that the plaintiff herein be granted leave to amend the statement of claim dated 12<sup>th</sup> September 2022.
  - b. that costs be in the cause.
2. The application is premised on the Claimant/Applicant's supporting affidavit sworn on 25<sup>th</sup> May 2023. It is deponed in the said affidavit:-
  - a. that the Claimant is desirous of amending his statement of claim dated 12<sup>th</sup> September 2022 for the reasons that since institution of the claim herein, the 1<sup>st</sup> Respondent has proceeded and interdicted the Claimant on 6<sup>th</sup> February 2023 on allegation that he had incited the 1<sup>st</sup> Respondent's staff vide a letter dated 30<sup>th</sup> January 2023 send to social media.
  - b. that the effect of the interdiction is that the Claimant/Applicant is paid half his salary and house allowance, and is not allowed to leave Nairobi without the Managing Director's permission.



- c. that despite the Claimant showing cause why he should not be dismissed, the 1<sup>st</sup> Respondent has failed to take appropriate action.
  - d. that the Claimant is aggrieved as the said interdiction is malicious and merely the 1<sup>st</sup> Respondent's payback to the Claimant for instituting the suit herein.
  - e. that since the Respondents' witnesses have made reference to the said interdiction in their witness statements, it would be prudent and in the Claimant's best interest to have particulars of the interdiction included in the amended statement of claim.
3. The application is opposed by the Respondent vide a replying affidavit of Liza M. Nguti sworn on 19<sup>th</sup> July 2023. It is deponed in the said affidavit that the Claimant had failed to annex the proposed amended statement of claim to the application, which the Respondent termed as defective as the intended amendment remained unknown to the Respondents, that the application had been made late in the day, and that the suit herein relates to alleged transfer of the Claimant, which is different from the alleged interdiction alleged in the application herein.
  4. With leave of the Court, the Claimant filed a supplementary affidavit on 27/9/2023, sworn by himself on even date, annexing a draft amended statement of claim. The Claimant further deponed that the intended amendment related to his interdiction at work by the 1<sup>st</sup> Respondent, and that no prejudice will be occasioned by the amendment. Both parties filed written submissions on the application pursuant to the Court's directions in that regard, which I have considered.
  5. The two twin issues for determination in this application are whether the intended amendment of the Claimant's pleadings will introduce a new cause of action in the suit herein, and whether the orders sought by the Claimant/ Applicant are deserved.
  6. The cause of action in the suit herein is shown to be transfers of the Claimant by the 1<sup>st</sup> Respondent, which the Claimant pleads were unprocedural, irregular and unlawful. The Claimant has stated in the application herein that the interdiction in issue happened during the pendency of the suit herein, and was the 1<sup>st</sup> Respondent's payback to the Claimant for having filed the suit. That the interdiction was in bad faith, a fact allegedly confirmed by lifting of the same by the 1<sup>st</sup> Respondent after the application herein was filed.
  7. I have noted from the proposed (draft) amended statement of claim that the Claimant intends to claim damages for financial hardship occasioned by the alleged unlawful interdiction. In my view, the issues already pleaded by the Claimant and those proposed to be pleaded vide the intended amendment are co-joined at the hip, and that an amendment of the already filed statement of claim, rather than filing of a fresh suit founded on the alleged interdiction, would be the best way to go. Unnecessary multiplicity of suits must be avoided, where possible.
  8. The Court in *Florence Achieng Aseto -vs- Faulu Micro Finance Bank Limited* [2021] eKLR, relying on decisions in *St Patrick's Hill School Limited -vs- Bank of Africa Kenya Limited* [2018] eKLR and *Central Bank of Kenya Limited -vs- Trust Bank Limited* [2002] E.A. 365, stated as follows:-

“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 that 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.”



9. In my view, the intended amendment will not occasion any prejudice or injustice on the part of the Respondents. Indeed, none has been demonstrated.
10. Under Rule 14(6) of the *Employment and Labour Relations Court (Procedure) Rules* 2016, a party may amend pleadings before service or before pleadings close. After closure of pleadings, however, pleadings may only be amended with leave of the Court on oral or formal application; with corresponding right being given to the other party to amend its pleadings.
11. I find merit in the Notice of Motion dated 25/5/2023, and the same is hereby allowed in the following terms:-
  - a. the claimant is hereby granted leave to amend his statement of claim in terms of the draft amended statement of claim annexed to his supplementary affidavit filed in Court on 27/9/2023.
  - b. an amended statement of claim shall be filed and served within fourteen days of this Ruling.
  - c. the Respondents are granted corresponding leave to file and serve an amended response to the amended statement of claim within fourteen days of being served with an amended statement of claim.
  - d. each party shall bear its own costs of the application.
  - e. orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 30<sup>TH</sup> NOVEMBER 2023**

**AGNES KITIKU NZEI**

**JUDGE**

