



Namonyo v Barasa (Cause 261 of 2018) [2023] KEELRC 2773 (KLR) (3 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 2773 (KLR)

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

CAUSE 261 OF 2018

J RIKA, J

NOVEMBER 3, 2023

BETWEEN

ROBERT MAYEKU NAMONYO CLAIMANT

AND

HON. DIDMUS WEKESA BARASA, MP RESPONDENT

RULING

1. The Claimant has applied through a Notice of Motion dated 19th day of January 2023, for leave to amend his Statement of Claim.
2. The Application is founded on the Claimant's Affidavit sworn on 19th January 2023.
3. He explains that he was employed by the Respondent, Honourable Member of Parliament, Kimilili Constituency, as his personal driver, on 11th August 2017.
4. He was earning a monthly salary of Kshs. 40,000.
5. His grievance is that since August 2017, the Respondent has not paid his salary.
6. He initially claimed through the original Statement of Claim, salary arrears for the months of August, September, October, November and December 2017 at Kshs. 280,000.
7. Amendment is sought on the ground that the salary arrears have gradually increased, during the 5-year parliamentary term ending in 2022, to Kshs. 2,400,000. The Claimant wishes to substitute the amount of Kshs. 280,000, with Kshs. 2,400,000.
8. Hon. Didmus Barasa is opposed to amendment. He relies on his Affidavit, sworn on 22nd March 2023. He states that the Application is not made in good faith and is meant to delay trial. The Claimant has in the past applied to file additional documents and witness statements, and failed to serve the same upon the Respondent. The Application seeks to introduce a new cause of action.



9. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions. They confirmed filing and exchange of Submissions at the last appearance before the Court, on 25th July 2023.

The Court Finds: -

10. Rule 14 [6] of the [E&LRC \[Procedure\] Rules, 2016](#) allows a Party to amend Pleadings, before service or before close of the Pleadings. A Party may amend Pleadings after the close of the Pleadings, with the leave of the Court. Amendment may be at the instigation of the Court, where the Court is of the view that clarification is needed.
11. The Court is of the view that amendment is necessary, in clarifying the full extent of the arrears of salary claimed. The Claimant had pleaded at paragraph 17 of the original Statement of Claim, that he was pursuing the sum of Kshs 280,000 – together with any other arrears that may be outstanding.
12. Amendment would clarify what these other arrears that may be outstanding, are. It is noted for instance that, the arrears sought on amendment are based on the 5-year parliamentary term. Was the Claimant’s contract tied to the 5 years? Was it tied to parliamentary term, if the Claimant was a personal driver? What would happen if the Respondent was re-elected for another parliamentary term? Over what period was the Claimant employed by the Respondent, as his personal driver? Where do these arrears of salary begin and end?
13. These are some of the issues that perhaps, the Claimant seeks to clarify in his amendment.
14. Amendment does not introduce a fresh cause of action. The issue in dispute remains the arrears of salary. The Respondent is not in any way prejudiced, because the Rules allow him corresponding leave, to amend his own Pleadings.
15. The Court has noted that the Respondent is a Member of Parliament for Kimilili Constituency, in Bungoma County. His address is P.O. Box 60-50204 Kimilili. The Claimant’s address is P.O. Box 4008-0335 Kitale. The documents exhibited by the Parties relate to Kimilili Constituency Office. There is no reason why the Claim was presented in Nairobi, or why it should be retained at Nairobi. The dispute has the closest connecting factors with the western region. There is an Employment & Labour Relations Court Station, at Bungoma and/or Kakamega, where the Claim can be heard.

It Is Ordered: -

16. ...
 - a. The Application dated 19th day of January 2023, filed by the Claimant is allowed, and the Amended Statement of Claim deemed duly filed and served, subject to payment of the requisite court fees.
 - b. The Respondent may file and serve Amended Statement of Response, within 14 days of the Ruling.
 - c. The Claim is transferred to the E&LRC Bungoma /Kakamega for trial and disposal.
 - d. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 3RD DAY OF NOVEMBER 2023.



JAMES RIKA
JUDGE

