



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1108 OF 2015

BETWEEN

NANCY W. KAMAU.....CLAIMANT

VERSUS

NAIROBI CITY COUNTY.....RESPONDENT

RULING

1. The Respondent filed an Application dated 9th August 2021 seeking leave to amend the Statement of Response.
2. The Respondent filed a second Application of even date, seeking to have the Amended Statement of Claim struck out.
3. The Applications are the subject of today's Ruling.
4. The Application for Amendment of the Statement of Response, is necessitated by the Amended Statement of Claim. The Respondent states it was supposed to have filed its Amended Statement of Response on or before 28th October 2019, but did not do so. Whenever one Party amends its Pleadings, it cannot be denied to the other leave, to likewise amend its Pleadings, unless convincing reason is shown, why corresponding leave to amend should not be granted.
5. *The Application for Amendment of the Statement of Response is allowed under Rule 14 [6] of the E&LRC [Procedure] Rules, 2016, subject to payment of the requisite Court fees.*
6. The Application for striking out of the Amended Statement of Claim, is supported by the Respondent's Advocate, Abwao Eric Odhiambo, sworn on 9th August 2021.
7. He explains that the Claimant was employed by the defunct Nairobi City Council. She was dismissed on 26th June 2014 by the Nairobi City County Secretary and the Head of Public Service. According to the Respondent, the Claimant should have sued the Nairobi City County Public Service Board.
8. The County Public Service Board, exercises disciplinary control over County Public Servants under Section 59[1][1] of the County Governments Act, and is capable of suing and being sued in its own name.
9. The Board ought to be the proper Respondent.
10. The Claimant is opposed to the Application for striking out, through her Replying Affidavit, sworn on 1st November 2021.
11. She states that she was employed by the Nairobi City Council in the Inspectorate Department. She was dismissed on 26th June 2014 through the County Secretary and the Head of Public Service.
12. Nairobi City County, is the successor in title to the Nairobi City Council, hence the right party to be sued.
13. Parties agreed to have the Applications considered on the strength of Written Submissions which have been confirmed to be on record.

The Court Finds: -

14. The Application for Amendment of the Statement of Response is allowed as stated above.
15. The Nairobi City County, is a successor to the Nairobi City Council, who initially employed the Claimant.
16. The Claimant was dismissed by the Nairobi City County Secretary, acting for the Nairobi City County.
17. There is nothing wrong in suing the Nairobi City County, an entity capable of suing and being sued in its own name.
18. If any Party feels that the Board should be a Party to the proceedings, it is open for such a Party to apply for joinder of the Board. It is pointless to strike out the entire Claim simply because the Board has been left out. The Respondent should perhaps have applied to join the Board, instead of applying to strike out the Claim.
19. The Nairobi City County is definitely the successor to the Nairobi City Council. It is the successor Employer, in relation to the Claimant. If there are other organs of the Nairobi City County who should be joined to the proceedings, Parties are free to apply for joinder. The successor and principal Employer is the Respondent herein. There is no ground to justify striking out of the Claim.

IT IS ORDERED: -

- a. The Application for Amendment of the Statement of Response is allowed, subject to payment of the requisite court fees.*
- b. The Application by the Respondent to strike out the Statement of Claim is declined.*
- c. Costs in the cause.*

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 23RD DAY OF FEBRUARY 2022.

James Rika

Judge