



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 961 OF 2016**

**(Before Hon. Lady Justice Anna Ngibuini Mwaure)**

**DANIEL KIBASO MORIASI .....1<sup>ST</sup> CLAIMANT**

**JACKSON OMONDI OKOTH.....2<sup>ND</sup> CLAIMANT**

**SIMON LOKITARI LOKWANYA.....3<sup>RD</sup> CLAIMANT**

**VINCENT GESORE.....4<sup>TH</sup> CLAIMANT**

**JOSHUA MULI MUTUA.....5<sup>TH</sup> CLAIMANT**

**WYCLIFF ISIGI KIBAGA.....6<sup>TH</sup> CLAIMANT**

**WILLINGTON MALOBA.....7<sup>TH</sup> CLAIMANT**

**VERSUS**

**POZZALANA STONES LIMITED.....RESPONDENT**

**RULING**

**INTRODUCTION**

1. The Claimant filed an application to amend their memorandum of claim under Section 14(b) of Labour Relations Court (Procedure) Rules. The notice of motion is dated 19<sup>th</sup> February, 2021 and seeks to amend the memorandum of claim dated 23<sup>rd</sup> May, 2016.

**FACTS**

2. The Claimant avers by their application dated 19<sup>th</sup> February, 2021 that after they filed their memorandum of claim they realized there were prayers which were erroneously omitted and which are necessary to ensure just determination of controversy between the parties.

The affidavit is signed and deposed by **DANIEL KIBASO MORIASI** who has deposed at also on behalf of the other Claimants and he confirms he has consent from the other Claimants.

3. The Respondent in their replying affidavit dated 14<sup>th</sup> December, 2021 says the provision under which the application is premised on does not provide for amendment of a claim.

4. They say the application has no merits and should be dismissed.

They also aver they were not served with the notice of change of advocates by the applicants advocates and that further there is no consent by the other Claimants authorizing **DANIEL KIBASO** to swear their affidavit of their behalf.

5. They also aver they Claimants have not included particulars of wrongful termination and so claims the Claimants have no new prayers and so their application should be dismissed with costs.

## DECISION

6. Section 14 (6) of the Employment and Labour Relations Court Rules under which this application is brought before this court provides as follows:-

“A party may amend pleadings before service or before the close of the pleadings.”

It further provides that after the close of the pleadings the party may only amend pleadings with the leave of the court on oral or formal application and the other party shall have a corresponding right to amend its pleadings.

7. The court finds that the applicant therefore has brought the application under the right statute.

8. The other points of objection raised by the Respondent herein are that the Claimant’s advocates did not serve them with the notice of change of advocates. In my records, there is indeed a filed notice of change of advocates dated 19<sup>th</sup> July, 2017.

9. The other objection that there is no consent by the other Co-claimants is also proved wrong as there is indeed a consent signed by the Co-claimants and dated 25<sup>th</sup> May, 2016.

10. The issues raised by the Respondent have no merits therefore.

The court is persuaded to grant the applicant leave to amend its memorandum of claim to allow ends of justice to be met. The said memorandum of claim should be filed and served within 7 days from the date of this Ruling.

Upon service the Respondent should put a response if they wish within 7 days.

Mention on 14<sup>th</sup> April, 2022 to confirm compliance and give further directions.

Order accordingly.

Delivered, dated and signed in Nairobi this 18<sup>th</sup> day of March, 2022.

**ANNA NGIBUINI MWAURE**

**JUDGE**

## ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**