



REPUBLIC OF KENYA



KENYA LAW
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**Nyamu v Kenya Electricity Generating Company Limited (Cause
1915 of 2017) [2022] KEELRC 1690 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1690 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1915 OF 2017
AN MWAURE, J
MAY 26, 2022**

BETWEEN

MARY WANJIRU NYAMU CLAIMANT

AND

KENYA ELECTRICITY GENERATING COMPANY LIMITED ... RESPONDENT

RULING

1. The Claimant prays by her notice of motion dated March 15, 2021 and is praying to be granted leave to amend her statement of claim.

Claimant's Facts

2. The Claimant states she was employed as a casual labourer in June, 1999 and was confirmed on permanent basis in October, 2006 and held position of an Executive Assistant.
3. She states that on May 24, 2016 she applied for leave as she wanted to go on leave from May 27, 2016 to June 2, 2016. She says on May 29, 2016 she travelled on official duties to Kipevu Power Station and claimed for a reimbursement of Kshs.49,500/= and was paid on 6/6/2016.
4. She says on June 13, 2016 the leave application was maliciously approved by the Claimant's supervisor when it was already overtaken by events.
5. On August 1, 2016 she received a notice to show cause and she explained she had applied for leave but same was overtaken by events.
6. Bv She says despite explaining the position she received a dismissal letter dated October 21, 2016 and the Kshs.49,500/= was deducted from her dues.
7. She appealed the dismissal but the same was upheld.
She claims her dismissal was unfair and was in contravention of the employment contract.



8. The statement of claim was filed on 9th September, 2017 and amended one was dated 18th January, 2021.
9. The Respondent replying affidavit is dated February 24, 2022. The same is deponed by one Martin Makallah an officer of the Respondent Company.
He says that the original statement of claim was filed on September 26, 2017.
10. He also says that the grounds relied on by the Claimant to support her application is essentially events relating to the Claimant's initial employment with the Respondent until separation.
11. He says that the Claimant should not be given leave to amend her statement of claim since it is time barred. The Claimant termination was on October 21, 2016 and he filed the application on March 15, 2021 Claimant intends to introduce new matters three years after the termination.
12. He therefore says the proposed amendments are time barred and cannot be allowed at this point.
13. The court has critically considered the submissions by the respective parties and the cited authorities.

Decision

14. The court has considered that Section 14(6) provides that "a 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".
15. The Claimant's averment is that they are not introducing a new cause of action and the amended prayers emanate from the same set of facts.
16. The Respondent on the other hand avers that the prayers for additional reliefs are time barred since the termination was on October 21, 2016 and the amendments are sought by application dated March 15, 2021.
17. The court is not convinced that prayers for additional relief is introducing a new cause of action and so is time barred. The main suit was well filed within time on September 19, 2017. The Respondent filed a response dated November 10, 2017 and the Claimant responded on November 16, 2017. The pleadings were essentially closed in November, 2017.
18. The Claimant has not demonstrated why she took so many years to amend her claim.
Indeed as well observed by the Respondent, in the Claimant's affidavit in support of the application to amend her claim she merely narrates the events leading to the termination of her employment and did not endeavour to explain why she took too long to amend her prayers.
19. Even if the law gives court discretion to give leave to amend pleadings the discretion cannot be stretched indefinitely. The court agrees with the observations in the case of *Kenya Wine Agencies vs Yobesh Amoro* Cause No.180 of 2015 that if the Claimant was serious about amending the claim she should have done so long ago as "Equity only aids the Vigilant not the indolent."
A person who has sat on his rights for so many years does not deserve the exercise of court's discretion in his favour, especially if doing so is going to cause inconvenience and prejudice to the other party in the suit".
20. For the above reason I find no merit in the application dated March 15, 2021 is and so dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF MAY, 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 March 15, 2020 and subsequent directions of April 21, 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 *Civil 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

