



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

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**Kirimi v Sameer Africa Limited (Cause 303 of 2019)
[2022] KEELRC 112 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 112 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 303 OF 2019
MN NDUMA, J
JUNE 23, 2022**

BETWEEN

GABRIEL M. KIRIMI CLAIMANT

AND

SAMEER AFRICA LIMITED RESPONDENT

RULING

1. By a Notice of Motion dated 10th January, 2022, the applicant seeks leave of the Court to amend his statement of Claim dated 3rd May, 2019 in terms of the draft amended statement of claim annexed to the application marked GK1.
2. The amendments are said to be necessary to concisely place claimant's case and bring forth all issues for eventual determination by the Court. That the intended amendments are not prejudicial to the respondent and are in the interest of justice.
3. The application is opposed by the respondent vide grounds of opposition dated 20th January, 2022 to wit that they introduce a new cause of action; are statute barred; have been brought after inordinate delay and are prejudicial to the respondent.
4. Both parties filed written submissions and the Court having considered depositions and submissions by both parties is guided by the decision in the case of *Central Kenya Limited -vs- Trust Bank Limited* [2002] 2 E.A. 365 where it was held: -

“... 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,

- (a) provided there has been no undue delay,
- (b) that no new or inconsistent cause of action is introduced,



- (c) that no vested interest or accrued legal right is affected and
- (d) That the amendment can be allowed without injustice to the other side.”
5. This suit was filed on 13th May, 2019 and responded to by the respondent and the claimant filed statement of agreed issues on 9th August, 2019 to wit: -
- (1) Whether the claimant’s employment was unlawfully terminated.
- (2) Whether the claimant is entitled to damages and the quantum thereof.
- (3) What should be the order on costs.
6. This application as earlier said is dated 10th January, 2022 and the proposed amendment in the attached draft may be outlined as follows:-
- (i) At paragraph 3 is intended to introduce a new phrase “a consolidated gross salary of Kshs 160,000 per month.”
- The salary had not been stated in the original statement of claim.
- (ii) Introduction of a new paragraph 3A to wit;
- “The respondent in demonstrable bias, malice and bad faith, failed to consider sufficiently or at all the special audit report on the lost products which report was rendered at the hearing before the disciplinary committee and thereby arrived at wrong decision.”
- (iii) Particulars of bias, malice and bad faith have been amended by deleting paragraphs 4; 4(a) (b) and (c)
- (iv) The reliefs sought by the claimant are substantively the same the only amendment sought being to replace the phrase: -
- “Claimant’s dismissal was unfair and unlawful” with the phrase “the respondent’s decision to terminate the claimant’s employment was without merit, unfair and unlawful.”
7. It is the Court’s considered decision that the amendments sought only seek to put the particulars of the claim in a more precise manner without introducing any new cause of action. Though the amendment sought may have been sought earlier than it was, the Court finds that the amendments sought do not prejudice the respondent in a manner that cannot be remedied by way of costs since the respondent will be afforded opportunity to file amended statement of defence and the matter proceed to trial thereafter.
8. The Court therefore finds that the amendments sought fall within the guidelines set out in Central Kenya Limited case(*supra*).
9. The application is granted and the filed draft amended statement of claim deemed to have been duly filed and served subject to payment of requisite fees. Costs shall be in the cause.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23RD DAY OF JUNE, 2022.

MATHEWS N. NDUMA

JUDGE



Appearances

Mr. Mungla for claimant

Mr. Kamau for Respondent

Ekale – Court clerk

