



**Amalgamated Union of Kenya Metal Workers v Shankar Electronics Limited  
(Cause 663 of 2020) [2022] KEELRC 1592 (KLR) (2 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1592 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 663 OF 2020**

**B ONGAYA, J**

**JUNE 2, 2022**

**BETWEEN**

**AMALGAMATED UNION OF KENYA METAL WORKERS ..... CLAIMANT**

**AND**

**SHANKAR ELECTRONICS LIMITED ..... RESPONDENT**

**RULING**

1. The Court delivered a ruling in the suit on 18.03.2022 determining the claimant's application filed on 01.12.2021 with orders:
  1. The claimant is hereby granted leave to amend the memorandum of claim.
  2. The claimant to file and serve an amended memorandum of claim in a bundle containing the list and copies of documents and witness statements to be relied upon at the hearing and to so serve by close of 24.03.2022.
  3. The respondent may file and serve by 01.04.2022 an amended statement of response in a bundle containing the list and copies of documents and witness statements to be relied upon at the hearing.
  4. The suit be mentioned on 26.04.2022 at 0900 Hours or soon thereafter for pre-trial directions.
  5. The applicant to pay the respondent's costs of the application in any event.
2. In allowing the application and granting the leave to amend the Court stated thus, "The applicant filed submissions as was directed but the respondent did not file submissions. Rule 18 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 permit amendments at any stage of the proceedings. As submitted for the applicant, amendments may be allowed to avoid multiplicity of suits or to achieve determination of the real issues in dispute. In the instant case the applicant says there were omissions and the amendment should be allowed to correct the omission. The Court has perused



the proposed amendment and they appear to flow from the recognition and collective agreements and related further claims and prayers are being urged in the proposed amendment. The Court considers that if the amendment is not allowed, nothing would stop the claimant from filing another suit to pursue the proposed claims and prayers. It will therefore be appropriate for the leave sought to be granted. The Court has considered that the claimant had withdrawn an earlier application to amend. That being the case, the applicant will pay the respondent's costs of the application in any event."

3. The Court therefore allowed the amendments on the basis of the contents of the draft amended memorandum of claim that was exhibited on the supporting affidavit filed together with the application that was allowed. The claimant filed the amended statement of claim on 23.03.2022. The Court has perused the amended statement of claim and the draft amended statement of claim exhibited on the supporting affidavit and finds that the two are substantially the same because the prayers in the filed amended statement did not vary at all from the ones in the draft exhibited on the supporting affidavit. It is that the claimant may have added one or two paragraphs not in the draft by way of introducing better and specific particulars of the claim but the final prayers in the amended statement of claim remained the same as those in the draft.
4. The respondent has filed a notice of preliminary objection on 07.04.2022 and dated 19.04.2022 through Kamami Njoroge & Company Advocates. It is urged that the amended statement of claim dated 23.03.2022 and filed on the same date is different in form, substance and content from that annexed to the claimant's application to amend dated 09.11.2021 and allowed per ruling dated 18.03.2022. Alongside the preliminary objection the respondent has filed the notice of motion on the same 07.04.2022 under section 3A of the *Civil Procedure Act* for orders that the amended statement of claim dated 23.03.2022 and filed on 23.03.2022 be struck out and costs of application awarded to the respondent. It is urged that the amended statement is different from the draft in the application, it seeks to introduce a new cause of action, and it amounts to abuse of Court process. The application is based on the annexed supporting affidavit of Kamami Njoroge Advocate for the respondent.
5. The claimant has opposed the application by filing on 23.05.2022 the grounds of opposition through Khaminwa & Khaminwa Advocates. The claimant opposes upon the following grounds. The application and the preliminary objection are a non-starter and an abuse of court process. They contradict Rule 18 of the Court's Rules that the Court may grant leave to amend. The amendment was necessary to set out true facts which the parties really and finally intend to rely on. The respondent will suffer no prejudice and the application and the preliminary objection aim at delaying course of justice.
6. Parties' advocates made oral submissions. The Court has considered the submissions and has already found that the amendment while flowing from the exhibited draft, the amended statement of claim does not introduce new prayers different from those in the draft. By the orders in the ruling delivered on 18.03.2022, the terms are that leave was granted to amend the memorandum of claim and there were no strict terms that the amendment is strictly as per the draft. In the circumstances the application and preliminary objection filed for the respondent are liable to dismissal.
7. In conclusion the preliminary objection and the application filed on 07.04.2022 are hereby dismissed with costs and with further orders and directions:
  - a. Time for the respondent to comply with order (3) given in the ruling delivered on 18.03.2022 is extended to by close of 17.06.2022.
  - b. The parties to expeditiously fix a mention date for pre-trial directions as appropriate.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS THURSDAY 2ND JUNE, 2022.**



**BYRAM ONGAYA**  
**JUDGE**

