



**Maina v Harley's Limited (Employment and Labour Relations Claim
260 of 2019) [2022] KEELRC 4132 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4132 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CLAIM 260 OF 2019**

M MBARŪ, J

JULY 29, 2022

BETWEEN

CHARLES KURIA MAINA CLAIMANT

AND

HARLEY'S LIMITED RESPONDENT

RULING

1. The ruling herein relates to application dated May 4, 2022 filed by the respondent, Harley's Limited seeking for orders that they be allowed to file further supplementary list and bundle of documents and to amend the statement of response and counterclaim.
2. The application is made on the grounds that the respondent has gathered new and crucial information which is relevant in the determination of the issues herein. The respondent became aware that the claimant fraudulently transferred Motor Vehicle KCD xxxx to Carlos Auto Spares Limited in a bid to defeat the respondent's rights. Such vehicle is subject to a counter-claim dated May 17, 2019 and the purported transfer on June 9, 2015 to a third party is illegal while the claimant the company was registered on October 19, 2018.
3. In reply, the claimant's case is that the respondent's intended amendment of the counterclaim has no bearing to this case as the same falls under the ambit of Civil Division of the High Court the subject matter being civil in nature, and that the respondent is at liberty to institute civil case against Carlos Auto spares Ltd and any other relevant parties.
4. The intended further list of documents sought to be introduced does not relate to an employment matter before this court as they are documents obtained from third parties who are not party to this case. The respondent forcefully took possession of the said motor vehicle through the police and after fabricating charges of obtaining registration by false pretense against him, he was charged in court. The



court order giving possession of the motor vehicle to him has not been set aside or varied to give the respondent a right of repossession.

5. The purpose of the belated amendment of the counterclaim is to delay the hearing of this suit and to continue perpetuating injustice to the claimant through the police and the court should dismiss the application herein with costs and deny the respondent audience for disobeying court orders. Both parties addressed the application by way of written submissions.
6. The respondent as the applicant submitted that the amendment of pleadings before service or before close of proceedings is provided for in rule 13(6) of the [*Employment and Labour Relations Court \(Procedure\) Rules*](#) which further provides that after close of pleadings, a party may only amend pleadings with the leave of the court. He submitted that there is a need to amend the statement of response and counterclaim to better particularize the issue raised and enable the parties to litigate between themselves on the basis of the true state of facts and law. Additionally, the amendments sought do not raise new issues and the application has been brought in a timely manner. In the case of [*Dorcas Wairimu v Eastern Produce Kenya Limited \(Siret Estate\)*](#) [2021] eKLR, the court quoted the case of [*Central Kenya Ltd v Trust Bank Ltd & 5 Others*](#) (2000) eKLR as follows:

The overriding consideration in applications for such leave is whether the amendments are necessary for the just determination of the controversy between the parties. Likewise, mere delay is not a ground for declining to grant leave. It must be such delay as is likely to prejudice the opposite party beyond monetary compensation in costs. The policy of the law is that amendments to pleadings are to be freely allowed unless by allowing them, the opposite side will be prejudiced or suffer injustice which cannot properly be compensated for in costs.
7. The respondent submitted that the claimant disposed of the motor vehicle it financed the purchase of and there is thus no motor vehicle that can now be surrendered. That considering the said motor vehicle was registered in the name of the respondent and it did not consent to the alleged transfer, the said transfer to Carlos Auto Spares Limited was done fraudulently with a view to defeat the respondent's rights in the motor vehicle. It further submitted that this application has been made promptly without undue delay and the claimant will not suffer any prejudice as he will have his opportunity to respond if need be. That on the other hand the claimant has not demonstrated in his reply, any prejudice to be suffered to warrant a denial of leave to amend. In the case of [*Gibson Ikumu Munanga v Teachers' Service Commission & another*](#) [2022] eKLR, the court in allowing an application for leave to amend observed that the respondent had not disclosed any prejudice it may suffer which cannot be compensated by costs if the leave sought to amend the claim was granted, as held in the case of [*John Mulwa Kang'atu v Pan African Insurance Co Ltd*](#) (2015) eKLR.
8. The respondent has demonstrated the reasons why leave should be granted and therefore the prayers sought in its application should be allowed as prayed. That section 27(1) of the [*Civil Procedure Act*](#) provides that the costs of and incidental to all suits shall be in the discretion of the court or judge, provided that they shall follow the event unless the court or judge shall for good reason otherwise direct. It submitted that the claimant in this case should be condemned to pay the costs of this application. In submissions, the claimant reiterated his replying affidavit.

Determination

9. Indeed pursuant to rule 14 of the [*Employment and Labour Relations Court \(Procedure\) Rules, 2016*](#) once pleadings have closed, a party seeking to file new documents, records or pleadings and or is seeking to amend pleadings must do so through a formal application to allow the other party a chance to respond and for the court to appreciate the gist of the same and hear the matter on the merits.



10. Pleadings herein closed. The matter was scheduled for hearing but frustrated by various issues. The respondent is seeking to file and introduce new matters which have arisen pending the hearing and which are found relevant herein for the court to fully determine all the issues.
11. The new and relevant matters giving rise to this application are that the claimant disposed of the motor vehicle the respondent had financed the purchase of and there is thus no motor vehicle that can now be surrendered. The said motor vehicle was registered in the name of the respondent and it did not consent to the alleged transfer, the said transfer to Carlos Auto Spares Limited was done fraudulently with a view to defeat the respondent's rights in the motor vehicle
12. The claimant opposed the application fundamentally on the grounds that the new matters the respondent is seeking to introduce should be filed before the High Court which has jurisdiction to determine the ownership of such motor vehicle.
13. Without going into the merits of the claim, it is not contested that while the claimant was in the service and employment of the respondent he secured a work benefit and was allowed the purchase of Motor Vehicle Registration Number KCD xxxx and was registered in the respondent's name to ensure its payment in full.
14. The benefit of purchase of motor vehicle financed by the respondent arose in employment. Employment has since terminated.
15. The claimant does not contest that he has since transferred the vehicle, KCD xxxx to Carlo Auto Spares.
16. This then becomes an important and relevant matter for the court to determine. It cannot be removed and placed before the High Court for the sole reason that financing and purchase of a motor vehicle are matters for the High Court. The transaction between the parties arose within the series of an employment relationship. The predominant issue herein is employment and labour relations.
17. In *Suzanne Achieng Butler & 4 others v Redhill Heights Investments Limited & another* [2016] eKLR the court while addressing a similar matter held that;

... Would an employee who during the tenure of his employment borrowed money or took a mortgage predicated on the employment relationship upon contesting termination of his services split his claim among the various Court? This court in the case of *Peter Mutisya Musembi & another v National Bank of Kenya* (2014) eKLR borrowing from the Australian cases of *Dean Patty v Commonwealth Bank of Australia* 2000 FCA 1072 and *Philip Morris Inc v Adam P Brown Male Fashions Ltd* (1981) 148 CLR became of the view that the argument that this court and indeed other courts of concurrent jurisdiction properly seized of a matter cannot adjudicate upon consequential or factual question which on the face of it appear to be within the exclusive jurisdiction of another court in the same judicial tier would unreasonably emasculate and whittle down the inherent power of a court of law to do justice without undue regard to technicalities.

18. The documents, records and the counter-claim the respondent is seeking to introduce at this stage are therefore relevant and important to these proceedings. The claimant will have a fair chance and opportunity to respond to the filed documents and counter-claim and assert his case.
19. Accordingly, application dated May 4, 2022 is found with merit and is hereby allowed;
 - a. The respondent shall file its documents and counter-claim and serve the claimant within 14 days from the date hereof;



- b. The claimant shall reply to the counter-claim and file any documents found relevant and necessary within 14 days after service;
- c. Pleadings shall close within the next 30 days;
- d. Parties shall be allocated a hearing date at the registry; and
- e. Costs shall abide the outcome of the claim.

DELIVERED IN COURT AT NAIROBI THIS 29TH DAY OF JULY, 2022.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

..... and

