



**Muhatia v Lions School (Cause E027 of 2021)
[2022] KEELRC 12851 (KLR) (14 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12851 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E027 OF 2021
NJ ABUODHA, J
OCTOBER 14, 2022**

BETWEEN

GRACE MUHATIA CLAIMANT

AND

LIONS SCHOOL RESPONDENT

RULING

1. Before me is an application dated 10th March, 2022 seeking leave to amend the memorandum of claim.
2. The application was supported by the affidavit of the claimant/applicant who stated on the main that after discussion with her counsel on record, she was informed that she had not captured the respondent correctly and that there were certain particulars which had not been included and some prayers were omitted.
3. The respondent opposed the application and filed a Replying affidavit through one Gurnam Singh Sabharwal who stated among others that the application was brought in bad faith, orchestrated by malice and with sole intention of unjust enrichment.
4. The respondent further stated that the application was totally defective, unimportant and bad in law.
5. As was held by the Court of Appeal in the case of *CBK v Trust Bank Ltd* [2002] 2EA 365 that an amendment of pleading and joinder of parties was aimed at allowing a litigant to plead the whole of the claim he was entitled to make in respect of his cause of action and that a party should always be allowed to make such amendments as are necessary for determining the real issues in controversy or avoiding a multiplicity of suits.
6. In other words, an amendment will always be allowed at any stage in the pleadings provided they are not initiated too late and no injustice or prejudice would be occasioned to the other side incapable of being properly compensated for by an award of costs.



7. The Court has reviewed and considered the draft amended statement of claim and sees nothing malicious or bad in law about it. The respondent has complained that the claimant/applicant is motivated by unjust enrichment however it should be noted that the claims contained in the draft amended statement of claim remain mere allegations subject to proof at the trial.
8. From the foregoing the Court allows the application dated 10th March, 2022 and hereby deems the draft amended memorandum of claim attached to the application, duly filed and served upon payment of requisite court fees.
9. The respondent shall have corresponding leave to amend and serve their statements of response if necessary, within 14 days of this ruling. The matter is hereby set for mention on 14th November, 2022 for directions on hearing and disposal. Costs in the cause.
10. It is so ordered

DATED AND DELIVERED AT ELDORET THIS 14TH DAY OF OCTOBER, 2022

ABUODHA NELSON JORUM

JUDGE ELRC

