



**Ipomai v Sanlam Kenya PLC (Cause 263 of 2018)  
[2022] KEELRC 13336 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13336 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 263 OF 2018  
J RIKA, J  
NOVEMBER 30, 2022**

**BETWEEN**

**VICTORIA IPOMAI ..... CLAIMANT**

**AND**

**SANLAM KENYA PLC ..... RESPONDENT**

**RULING**

1. The Claimant seeks leave to amend her Statement of Claim dated 5<sup>th</sup> March 2018.
2. The Application for leave is dated 18<sup>th</sup> January 2022.
3. The Claimant explains that at the time of filing the Claim in May 2018, she was still an Employee of the Respondent. Her contract has since been terminated. She proposes to amend her Statement of Claim, to reflect that she is now an ex-Employee, not an Employee of the Respondent.
4. She prays that the attached Draft Amended Statement of Claim, Witness Statements and List of Documents are deemed as duly filled, upon payment of the requisite fees.
5. The Application is based on the Supporting Affidavit of the Claimant, sworn on 18<sup>th</sup> January 2022.
6. The Respondent opposes the Application, relying on Grounds of Opposition, dated 3<sup>rd</sup> August 2022. It is submitted that amendment has been sought after inordinate delay.
7. The Claim was filed 4 years and 5 months before the Application. The Claimant has never served the Respondent with the Summons. Without Summons, the Respondent has no obligation to file its Statement of Response. The Claim has abated, in the absence of the Summons, as held in *Samuel Kabui Munyiri v. Pioneer Plumbers Limited* [2019] e-KLR.
8. The prayer for reinstatement, introduced through the amendment, cannot be granted as it is over 3 years allowed by Section 12[3][vii] of the *Employment and Labour Relations Court Act*, since



termination took place. The Respondent submits that the Claimant has failed to clearly mark, or otherwise identify the amendments. It is not possible for the Court to discern all the proposed changes. Instead of marking the proposed amendments, the Claimant has typed out what is no longer needed. The Respondent invokes *Co-operative Insurance Company of Kenya Limited v. Paem Agencies Company Limited* [2014] e-KLR, where it was held that underlining of amended parts in red ink, and the heading to the Amended Pleadings, is not a procedural technicality, but a fundamental error that goes to the root of the Application. Pleadings, it was held, must be self-explanatory.

9. It is argued further for the Respondent that there is no prayer in the Application specifically, for amendment of the Witness Statement, and the Draft Amended Witness Statement itself, does not show the proposed amendments underlined in red as required on amendment. On the new bundle of Documents, again the Respondent submits that there is no order specifically sought for leave to file fresh documents. The Documents were illegally obtained by the Claimant from the Respondent, after termination. The Claimant's contract barred her from using confidential information, acquired in the course of her employment for her personal advantage, without the consent of the Respondent's CEO.
10. Parties recorded a consent order before the Court, on 6<sup>th</sup> July 2022, to have the Application considered and determined on the strength of their Affidavits, Documents and Submissions. They confirmed filing and exchange of their Submissions at the last appearance before the Court, on 21<sup>st</sup> September 2022.

**The Court Finds: -**

11. This file has generated multiple Pleadings and Documents in its 4 years' and 6 months' history. Most of them have been filed by the Claimant.
12. A lot of time went into contesting an Application made by the Claimant dated 5<sup>th</sup> March 2018, seeking that the Respondent is restrained, from undertaking a disciplinary process against the Claimant, pending hearing and determination of the Claim.
13. The Court gave orders of injunction against the Respondent, in a Ruling dated 21<sup>st</sup> May 2018. The disciplinary process was frozen. It is not clear how termination of the Claimant's contract took place, necessitating the filing of the present Application for amendment of the Statement of Claim.
14. The Respondent submits that it has not been served the Summons, together with the Statement of Claim, under Rule 11 of the Employment and Labour Relations Court Rules [Procedure], 2016. Its position is that the Claim has therefore abated, and it is not obliged to file any Statement of Response.
15. The Parties appear to have been engrossed in Interlocutory Applications, that substantive Pleadings appear not to have been filed and exchanged. If there is no Summons served, and Statement of Response filed, why does the Respondent oppose amendment?
16. Rule 11 above states that Summons shall be valid in the first instance for a period of 6 months beginning on the date of issue. They may be extended from time to time, if the Court is satisfied that it is just to do so. The E&LRC [Procedure] Rules, 2016 do not have the words 'abatement of suits.' If the E&LRC [Procedure] Rules, 2016 make provision for abatement of Claims, the Court must be moved to find and declare that a Claim has abated. Claims do not just die a natural death. There must be an order made for abatement and closure of the file.
17. There is no reason why the Respondent has not moved the Court to declare that the Claim has abated. Parties have been litigating Interlocutory Applications. The Respondent has been participating in these Applications, and has not contested the validity of the Claim. The Court does not think it is



- prudent to declare that the Claim has abated, on an Application for amendment of Pleadings, and find that the Respondent is discharged from its obligation on filing a Response to the Claim.
18. A Party is allowed under Rule 14[6] of the E&LRC [Procedure] Rules, 2016, to amend Pleadings before service or before the close of Pleadings. If the Respondent has not received the Summons as submitted, then the Pleadings have not closed, and there would be no bar, to the Claimant amending her Pleadings. If the Pleadings have closed, a Party may amend with the leave of the Court, through an oral or written application for leave. The other Party shall have a corresponding right to amend its Pleadings. The Court retains the discretion to direct the Parties to amend their Pleadings, where the Court finds that the Pleadings do not adequately set out the particulars, or for any other reason the where Court requires clarification on any Pleading or Submission filed by a Party under Rule [14] [7].
  19. Rule 14 [8] requires Witness Statements to be filed at the time the Statement of Claim is submitted. The Rule does not regulate amendment of Witness Statements, but there is provision for calling further Witnesses under Rule 14[9] which would open the door for filing of additional Witness Statements with the leave of the Court. After the close of Pleadings, a Party may file Supplementary Bundle of Documents with the leave of the Court.
  20. The Respondent has not, as submitted by the Respondent, received Summons and the Statement of Claim. The Pleadings have not closed. The Claim has not been shown to have abated. Leave to amend, and to file additional Documents and Witness Statement, can only be granted out of the abundance of caution.
  21. The documents sought to be introduced by the Claimant include: Business Review and Process Improvement Initiatives; Employee Survey Correspondence; Forensic Investigation Correspondence; IRA Inspection Report; SEM Loan Correspondence; Tax Health Check and Liabilities; Safaricom Claim; Confirmation of Engagement; E-mail correspondences relating to the disciplinary process and remuneration; Group Expenses; Negotiations and Settlement Proposals; Request of acting pay; and Respondent's property structure and funding. The Respondent has not particularized which of the above documents are confidential. It has not been shown that the Claimant, as a former Senior Management Employee of the Respondent, obtained the documents irregularly. How would a Human Resource Manual, or correspondence relating to a disciplinary process which involved the Claimant, be confidential, and out the Claimant's reach. The documents appear related to the issues raised in the Statement of Claim.
  22. The objection raised, on delay in presentation of the Application has no merit. First, the Respondent argues that it has not been served the Summons and the Statement of Claim. Pleadings have not closed and technically, there would be no need for leave. Second, the Parties have been involved in negotiations for voluntary settlement, which may have commended to the Parties, that they hold service, filing and exchange of court processes.
  23. It is not clear to the Court why the Claimant's contract was terminated, during the subsistence of an order issued by the Court restraining the Respondent from terminating the Claimant's contract. A prayer for reinstatement and corrected sum in compensation for unfair termination has been proposed in the Amended Statement of Claim. Re-employment could not be pleaded, while the Claimant was still in employment. She should not be pre-empted from pursuing re-employment, or correcting the figures pleaded in compensation. It cannot be presumed that orders requiring the Respondent to re-employ the Claimant, are out of reach. It is necessary to allow the Parties to make their Pleadings, and to give their evidence, before a determination on the appropriate remedies if any, should issue.
  24. The Court Orders: -



- a. The Claimant is allowed leave of 14 days to file and serve Amended Statement of Claim, fresh Witness Statement, and Supplementary Documents.
- b. The Drafts filed with the Application are not to be deemed as properly filed and served, as they were filed when the Summons issued by the Court, were of doubtful validity. There shall be fresh filing and service, within 14 days of the Ruling.
- c. The Amended Statement of Claim shall be served with the Summons, which are hereby renewed for another 6 months from the date of this Ruling.
- d. The Respondent shall file its Statement of Response, Witness Statement[s] and Documents within 30 days of receiving the Amended Statement of Claim, Summons, fresh Witness Statement and Supplementary Documents from the Claimant.
- e. Parties shall soon thereafter move the Court to confirm compliance, and to reserve a date for the main hearing.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 30<sup>TH</sup> DAY OF NOVEMBER 2022.**

**JAMES RIKA**

**JUDGE**

