



**Nduru v Avenue Car Hire and Leasing Ltd (Cause 839 of 2018)
[2022] KEELRC 13264 (KLR) (23 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13264 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 839 OF 2018
BOM MANANI, J
NOVEMBER 23, 2022**

BETWEEN

SIMON WANGAI NDURU CLAIMANT

AND

AVENUE CAR HIRE AND LEASING LTD RESPONDENT

RULING

1. The claimant has filed an application dated June 9, 2022 seeking to amend his statement of claim. The application is opposed.
2. I note that the application is expressed to be filed pursuant to various provisions of the *Civil Procedure Rules*. In addition, the applicant has also invoked the usual ‘and all other enabling provisions of law’ clause as the anchor for the motion. Yet, rule 14(6) of the *Employment and Labour Relations Court (Procedure) Rules, 2016*, provides the basis for invoking the court’s jurisdiction to amend pleadings before it.
3. This court has previously expressed its reservations on the appropriateness of the practice by parties to move it under the *Civil Procedure Rules* in the face of rules that guide the conduct of proceedings before the court (see *Prisca Jepngétich v Generation Career Readiness Social Initiative Limited [2021] eKLR*). However, relying on the omnibus clause in paragraph two (2) of this ruling, I will consider the application as properly before me.
4. The power to amend pleading is a discretionary one. It is usually exercised freely in order to allow parties the opportunity to reformat their pleadings in a manner that ensures that all issues in controversy are set out in a manner that is clear and concise. However, this power must be exercised judiciously.
5. Although it is generally desirable that applications for amendment of pleadings be presented early in the life of a case, the court is still permitted to allow parties to make amendments at any stage of the



trial. This includes amendments at the appeal stage (see *Diamond Trust Bank Kenya Limited v Invesco Assurance Company Limited & another [2021] eKLR*).

6. The factors that a court considers when determining an application to amend pleadings include whether: the proposed amendment has been made after undue delay which cannot be compensated by an order for costs; the proposed amendment seeks to introduce a new and inconsistent cause of action; the proposed amendment will result in the introduction of a claim that is barred by limitation; and the proposed amendment will prejudice a vested interest or accrued legal right.
7. I have considered the application before me. In large part, the aspects of the statement of claim sought to be amended do not seek to introduce a new cause of action. The only attempt at introducing new causes of action that are in any event time barred relates to the proposed claims for National Social Security Fund (NSSF) dues and pay for work undertaken on public holidays and Sundays. Otherwise, the rest of the proposed amendments appear to seek to alter the statement of claim so that it is presented in a more concise manner.
8. The respondent has objected to the application to amend on grounds that it has been presented too late in the day. I agree that the application could have been filed earlier. I also agree that filing the application this late occasions some inconvenience to the respondent. However, this inconvenience can be adequately compensated by an order for costs.
9. The upshot is that the application dated June 9, 2022 is allowed and the claimant granted leave to amend his statement of claim save that the request to introduce new claims for NSSF dues and public holidays and Sundays is declined.
10. The amended statement of claim be filed and served within 14 days of this ruling.
11. The respondent is granted costs of the application.

DATED, SIGNED AND DELIVERED ON THE 23RD DAY OF NOVEMBER, 2022

BOM MANANI

JUDGE

In the presence of:

..... for the Applicant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

BOM MANANI

