



**Kamuri v Cleanshelf Supermarkets Limited (Cause 922 of 2018)
[2022] KEELRC 13252 (KLR) (17 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13252 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 922 OF 2018
L NDOLO, J
NOVEMBER 17, 2022**

BETWEEN

STEPHEN MURAYA KAMURI CLAIMANT

AND

CLEANSHELF SUPERMARKETS LIMITED RESPONDENT

RULING

1. What is coming up for determination is the claimant’s application dated May 17, 2021, seeking leave to amend his Statement of claim.
2. The application is supported by the claimant’s own affidavit and is premised on the following grounds:
 - a. It is necessary to amend the claim so as to properly plead the claimant’s claim and seek more relevant prayers;
 - b. At the time of filing the claim some relevant facts were not pleaded and important prayers were not sought;
 - c. It is paramount to amend the claim so as to enable the court to determine the real issues in controversy;
 - d. The proposed amendments will help the court to better adjudicate on the nature of the claimant’s termination as well as all the other issues in controversy;
 - e. The proposed amendments will not occasion any prejudice to the respondent as the matter is yet to be set down for hearing and the respondent will have an opportunity to amend its defence, if necessary.
3. The Respondent filed grounds of opposition dated October 3, 2022 stating that:
 - a. The claimant’s application has no merit to warrant the court to exercise its discretion;



- b. The said application is misconceived and incompetent and ought to be dismissed with costs;
 - c. The application is an abuse of the court process and an afterthought as it has been brought to this court close to six years since the matter was filed;
 - d. The proposed amendments raise new facts aimed at altering the cause of action in this matter, contrary to order 2 rule 6(1) of the *Civil Procedure Rules*;
 - e. It is the respondent's legitimate expectation that litigation should come to an end and to allow this application amounts to prolonging the matter, which is contrary to the overriding objective of the *Civil Procedure Act* and the judicial process as a whole which advocates for expeditious disposal of suits;
 - f. The proposed amendments will not enable the court to determine the real questions in controversy but are rather aimed at defeating the efficient determination of the suit herein;
 - g. The proposed amendments will cause the respondent great prejudice which cannot be compensated with costs.
4. The Claimant brings his plea under order 8 rule 3(1) of the *Civil Procedure Rules* which provides for leave to amend pleadings after closure.
 5. In opposing the claimant's application, the respondent relies on order 2 rule 6(1) which provides that:
 6.
 - (1) No party may in any pleading make an allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his in the same suit.
 6. In his oral submissions before the court, counsel for the claimant cited the decision in Julius *Nzioki Wambua v Mohamed Khamis & another* [2020] eKLR where it was affirmed that the provision for amendment of pleadings ought to be applied so as to avail courts the opportunity to determine the true substantive merits of the case.
 7. A party's right to amend pleadings is further secured under order 2 rule 6 (2) which provides as follows:
 - (2) Subrule (1) shall not prejudice the right of a party to amend, apply for leave to amend, his previous pleading so as plead the allegations or claims in the alternative.
 8. Looking at the amendments the claimant proposes to make to his statement of claim, i find nothing to suggest mutation of the character of his claim.
 9. The application dated May 17, 2021 is therefore allowed. The annexed amended statement of claim shall be admitted upon the claimant paying the applicable court fees. The respondent may file a response to the amended statement of claim within twenty-one (21) days after service.
 10. The costs of the application will be in the cause.
 11. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF NOVEMBER 2022

LINNET NDOLO

JUDGE



Appearance:

Mr. Agwel for the Claimant

Ms. Nzioki for the Respondent

