



REPUBLIC OF KENYA



KENYA LAW
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**Achayo v Communications (Cause E349 of 2022)
[2022] KEELRC 13163 (KLR) (9 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13163 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E349 OF 2022
BOM MANANI, J
NOVEMBER 9, 2022**

BETWEEN

RONALD ACHAYO CLAIMANT

AND

AMIRAN COMMUNICATIONS RESPONDENT

RULING

1. By the application dated August 25, 2022, the respondent has moved the court for leave to amend its response to the claim in order to introduce a counterclaim. The claimant is opposed to the application.
2. The parties agreed to dispose of the motion through written submissions. Both have filed their submissions.
3. The respondent avers that upon conducting further investigations on the subject matter in dispute, it has emerged that the claimant allegedly engaged in activities which occasioned loss to the respondent. Consequently, the respondent wishes to claim compensation for the alleged loss against the claimant a factor that has necessitated the filing of a counterclaim and hence the application for amendment.
4. The claimant opposes the application on the ground that the respondent has not shared the investigation report justifying the request to amend the defense. The claimant also contends that the issues sought to be pursued *vide* the proposed counterclaim were already addressed internally and the claimant absolved of liability. Consequently, the issue is *res judicata*.
5. A counterclaim is a cross suit. It is a distinct claim that constitutes a distinct cause of action. A counterclaim arises in instances where a defendant in a suit has a claim against the claimant and desires that the claim be adjudicated upon alongside the original claim by the claimant so that the court makes one final judgment on the disputed issues.



6. Counterclaims are permissible so long as they can be conveniently adjudicated upon alongside the original claim in an action. The rationale for permitting this approach to adjudication of disputes is to minimize the possibility of lodging of multiple suits between the same parties.
7. In his objection to the application to amend the defense to introduce a counterclaim, the claimant does not suggest that it will be inconvenient to try the proposed counterclaim alongside his original claim. He appears to object to the application on grounds that question the merits of the proposed counterclaim. In my humble view, the issues raised by the claimant in opposition to the proposed amendment ought to be his response to the counterclaim should the application be allowed.
8. The other claim that the claimant raises is that the counterclaim seeks to introduce a matter that is res-judicata. However, this assertion is not supported by the requisite evidence. The doctrine of res judicata applies to bar re-litigation of matters that have been heard and determined by a court of competent jurisdiction. Whilst the claimant raises the plea of *res judicata*, he does not provide evidence of the case in which the issues proposed to be raised in the counterclaim were heard and determined on merits or at all.
9. Regarding the general aspect of amendment of pleadings, it is generally settled that parties are free to amend their pleadings at any time during the trial of their case. Although it is desirable that a prayer to amend pleadings be presented early in the life of a case, such applications can nevertheless be entertained even on appeal.
10. As a general guide, a court should permit a request to amend pleadings if it is intended to bring forth all the issues in controversy for resolution. Unless the prejudice and inconvenience that will be caused to the opponent cannot be adequately compensated by an order for costs, a prayer to amend a pleading ought to be allowed (see *Central Kenya Ltd v Trust Bank Ltd & 5 others [2000] eKLR*). The only bar to a request to amend a pleading as captured in the aforesaid Court of Appeal decision is if: the proposed amendment will result in a new and inconsistent cause of action; and it will take away a vested or accrued right. I do not understand the claimant as saying that the proposed amendment offends any of the above principles.
11. Evaluating the present application in the context of the foregoing parameters, I find that it has merit. Accordingly, the application is allowed as presented and the respondent granted leave to amend its defense to introduce the proposed counterclaim. Such amended to be actualized within ten (10) days of this ruling.
12. The claimant is granted costs of the application.

DATED, SIGNED AND DELIVERED ON THE 9TH DAY OF NOVEMBER, 2022.

B O M MANANI

JUDGE

In the presence of:

..... for the applicant

..... for the respondent

ORDER

In light of the directions issued on July 12, 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.

B O M MANANI

