



REPUBLIC OF KENYA



**KENYA LAW**  
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**Clerk, Kisii County Assembly v Kerubo & 7 others (Appeal E040 of 2021)  
[2022] KEELRC 13066 (KLR) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13066 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
APPEAL E040 OF 2021  
CN BAARI, J  
NOVEMBER 3, 2022**

**BETWEEN**

**CLERK, KISII COUNTY ASSEMBLY ..... APPELLANT**

**AND**

**RAGES KERUBO ..... 1<sup>ST</sup> RESPONDENT**

**VINCENT MOGONCHO ONYANGO ..... 2<sup>ND</sup> RESPONDENT**

**VICTOR OKINDO ..... 3<sup>RD</sup> RESPONDENT**

**DERRICK MASEGA ..... 4<sup>TH</sup> RESPONDENT**

**ISAIAH MATOKE ..... 5<sup>TH</sup> RESPONDENT**

**ARNOLD ONKOBE ..... 6<sup>TH</sup> RESPONDENT**

**DIRECTOR HUMAN RESOURCES MANAGEMENT, KISII  
COUNTY ..... 7<sup>TH</sup> RESPONDENT**

**COUNTY ASSEMBLY OF KISII ..... 8<sup>TH</sup> RESPONDENT**

**RULING**

1. Before court are two applications, one dated March 30, 2022 and another dated May 30, 2022. The applications are brought pursuant to rule 14 (6) of the *Employment and Labour Relations Court (Procedure) Rules* and order 8 rule 3, 5, 7 of the *Civil Procedure Rules*. The applicants in the two applications seek leave to amend the memorandum of appeal filed herein out of time.
2. The applications are supported by grounds on the face and the affidavits sworn by James O Nyaoga on March 30, 2022 and May 30, 2022. The crux of the applications is that the appellant/applicant and the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents herein are bound by the orders appealed against and ought therefore to have been appellants in this suit and not respondents.



3. It is the appellant/applicant's assertion that owing to their shared position and stand in the dispute both before the lower court, and this court, it is proper, fair and convenient for ease of representation that the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents take the position of appellants along with the current appellant.
4. The applicant contends that in order for the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents to be made appellants, it is necessary that the memorandum of appeal herein be amended.
5. The 1<sup>st</sup> to the 6<sup>th</sup> respondents opposed the applications vide replying affidavits sworn by Rages Kerubo, on April 6, 2022 and another sworn by the same Rages Kerubo on June 21, 2022.
6. The 1<sup>st</sup>-6<sup>th</sup> respondents' position is that they instituted suit against the appellant and the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents in the lower court, but that only the appellant herein entered appearance and participated in the suit, whose orders are the subject of this appeal.
7. It is the 1<sup>st</sup>-6<sup>th</sup> respondents' position that the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents cannot now allege to be aggrieved by orders resulting from a suit they did not participate in, so as to lodge an appeal against those orders.
8. It is the 1<sup>st</sup> - 6<sup>th</sup> respondents' contention that the applications are bereft of merit, is vexatious and an abuse of the court process. It is the respondents further position that they stand to be greatly prejudiced in the event the applications are allowed.
9. Submissions were filed for the parties, and which have been duly considered.

### **Determination**

10. I have considered the two applications, the grounds and affidavits in their support, the replying affidavits in opposition and the parties' written submissions. The issue for my determination is whether the applications satisfy the threshold for exercise of the court's discretion to allow the amendments sought.
11. Rule 14 (6) of the *Employment and Labour Relations Court (Procedure) Rules*, states: -
 

“A party may amend pleadings before service or before the close of pleadings:

Provided that after the close of pleadings, the party may only amend pleadings with the leave of the court on oral or formal application, and the other party shall have a corresponding right to amend its pleadings.”
12. The power of the court to allow amendment after close of pleadings is discretionary, and which discretion is informed by whether or not the amendment(s) is necessary for the just determination of the issues in dispute between the parties.
13. In *Central Kenya Ltd v Trust Bank Ltd & 5 others* (2000) eKLR, the court had this to say on amendment of pleadings:
 

“The overriding consideration in applications for such leave is whether the amendments are necessary for the just determination of controversy between the parties. Likewise, mere delay is not a ground for declining to grant leave. It must be such delay is likely to prejudice the opposite party beyond monetary compensation in costs.”
14. The 1<sup>st</sup>-6<sup>th</sup> respondents' contend that for reason that the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents did not participate in the trial before the lower court, they cannot now be heard to want to appeal against the resultant



orders of the lower court. My question in this respect is what then makes them respondents or parties to this suit at all?

15. It is not disputed that the orders of the lower court now impugned, and any other orders from the instant appeal, can only be implemented jointly by the appellant/applicant and the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> respondents.
16. This court in its ruling rendered on February 17, 2022, had questioned the wisdom of joining the 7<sup>th</sup> and 8<sup>th</sup> respondents as respondents and not appellants, being the persons who were required to implement the decisions of the lower court and by extension subsequent orders of this court.
17. I am convinced that the leave for amendment is necessary to enable this court fully determine the issues between the parties, and for easier implementation of the orders of the court.
18. I find the applications merited and are hereby allowed as prayed.
19. The appellant/applicant is allowed leave to amend the memorandum of appeal herein, and not later than 14 days of this order.
20. It is so ordered.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 3<sup>RD</sup> DAY OF NOVEMBER, 2022.**

**CHRISTINE N. BAARI**

**JUDGE.**

**Appearance:**

Mr. Onsongo Present for the Appellant/Applicant

Mr. Ochoki present for the 1<sup>st</sup> – 6<sup>th</sup> Respondents

Ms. Mumo h/b for Ms. Nyamwaya for the 9<sup>th</sup> Respondent

Ms. Christine Omollo-C/A

