



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT NAIROBI

CAUSE NO. 870 OF 2015

BETWEEN

MARGARET WANJIKU KIMANICLAIMANT

VERSUS

KENYA DEPOSIT INSURANCE CORPORATION.....RESPONDENT

RULING

1. The Claimant filed an Application on 26th June 2019 seeking to amend her Statement of Claim, which has in the recent past been subjected to other amendment.
2. She explains that she initially sued Chase Bank [Kenya] Limited. She subsequently amended her Statement of Claim, replacing Chase Bank [Kenya] Limited, with Kenya Deposit Insurance Corporation.
3. Parties had agreed on 8th April 2019, she states, to have the Claim proceed against Chase Bank Kenya Limited [in receivership]. The Claimant did not however seek leave to file amendment. The Claimant submits that unless she is granted leave, her Claim will be dismissed on a technicality.
4. The Respondent, Kenya Deposit Insurance Corporation opposes the Application. It is argued that the Respondent is a body corporate, with perpetual succession and capable of suing and being sued in its own name.
5. It entered appearance as such and filed preliminary objection stating that the Claim against the Respondent is time-barred, under Section 90 of the Employment Act. The Claimant's contract was terminated on 4th December 2014, but she only instituted the Claim against the Respondent on 4th November 2018. The Application is brought to defeat the statute of limitation.

The Court Finds:

6. Rule 14[6] of the E&LRC [Procedure] Rules, 2016, allows Parties to amend their Pleadings before service or before close of Pleadings. There is provision for amendment after close of the Pleadings, with the leave of the Court, on oral or formal application. The other Party has a corresponding right to amend its own Pleadings.
7. The Claimant amended its initial Pleadings, replacing Chase Bank [Kenya] Limited, with the current Respondent on 14th November 2018.
8. The Respondent raised preliminary objection, based on limitation of time under Section 90 of the Employment Act.
9. The Claimant was prompted to seek further amendment, in reaction to the preliminary objection. Amendment seeks to bring in Chase Bank Kenya Limited [in receivership].
10. Amendment sought is not premised on clarification of any issue in dispute, but is meant to defeat the position that the Claim, is statute-barred. The Claimant seeks to replace Party after another, and evade substantive legal objection raise to her Claim by Parties so joined, which in the respectful view of the Court, is in abuse of the law relating to amendment of Pleadings. The Claim was filed in 2015. It should not take the Claimant 5 years, to be clear in her mind, against whom the Claim should be directed. Chase Bank [Kenya] Limited was discharged from the proceedings at the instigation of the Claimant, through her initial amendment. She brought in the current Respondent, who filed its Pleadings and preliminary objection on statute of limitation. The Claimant seeks to bring in Chase Bank Kenya Limited [in receivership]

after discharging Chase Bank [Kenya] Limited. If she was unsure from the inception, she ought to have sued all the 3 potential Respondents and let the Court decide who was the Claimant's Employer. She cannot be allowed to keep amending her Claim, striking out and bringing in other Parties at will. The Court agrees with the Respondent that amendment sought, aims at defeating a legitimate defence of time-bar. The Court relies on **Kassam v. Bank of Baroda [2002] e-KLR**, where it was held that the Court must prevent valid policies, embodied in statutes, from being undermined by amendment of Pleadings. Intermittent amendments and change of Parties, also affect the right of those Parties to a fair trial. The Claimant seeks to avoid Section 90 of the Employment Act, by seeking further amendment to her Pleadings. **IT IS ORDERED:** -

a. The Application filed by the Claimant on 26th June 2019 is declined.

b. No order on the costs.

Dated and delivered at Nairobi, this 26th day of February, 2021.

James Rika

Judge