



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 1250 Of 2017**

JOEL OPUMBI.....1<sup>ST</sup> CLAIMANT  
JAMES KILONZO NZIOKI.....2<sup>ND</sup> CLAIMANT  
JAMES NZAU.....3<sup>RD</sup> CLAIMANT  
NICKSON OKUGA..... 4<sup>TH</sup> CLAIMANT  
EVANS OCHEGO.....5<sup>TH</sup> CLAIMANT  
MARIKO OTIENO..... 6<sup>TH</sup> CLAIMANT  
DANCUN MUTUA MUIA..... 7<sup>TH</sup> CLAIMANT  
CHARLES KWENDO MASINDE.....8<sup>TH</sup> CLAIMANT  
JOSEPH MUTINDA MUTHIO.....9<sup>TH</sup> CLAIMANT  
WESTBURY MUKABWA.....10<sup>TH</sup> CLAIMANT  
GEOFFREY M. KATUMO.....11<sup>TH</sup> CLAIMANT  
MUTHIANI NDUTU.....12<sup>TH</sup> CLAIMANT  
ANTHONY KIOKO MITHWI..... 13<sup>TH</sup> CLAIMANT  
THOMAS KYALO WAEMA.....14<sup>TH</sup> CLAIMANT  
JOHN MUTHIWA MUNYAO.....15<sup>TH</sup> CLAIMANT  
BONIFACE K. KIMONDIU.....16<sup>TH</sup> CLAIMANT  
THOMAS OSORO OMOGI.....17<sup>TH</sup> CLAIMANT  
KEVIN OMWEBU OGEKA.....18<sup>TH</sup> CLAIMANT  
ELIJAH OCHIENG NGESO.....19<sup>TH</sup> CLAIMANT  
MUTHAMA NZIOKA.....20<sup>TH</sup> CLAIMANT  
PETER ONGAGA ASUGA.....21<sup>ST</sup> CLAIMANT  
DICKSON WAMBUA KALII.....22<sup>ND</sup> CLAIMANT

JOHN MWAURA KARIUKI..... 23<sup>RD</sup> CLAIMANT  
NICHOLAS M. NDUNDA.....24<sup>TH</sup> CLAIMANT  
NICHOLAS M. MATHEKA.....25<sup>TH</sup> CLAIMANT  
AUGUSTINE S. OLUKA.....26<sup>TH</sup> CLAIMANT  
BENSON O. LISA.....27<sup>TH</sup> CLAIMANT  
ALFRED ONCHIRI..... 28<sup>TH</sup> CLAIMANT  
BENJAMIN K. SAMMY.....29<sup>TH</sup> CLAIMANT  
OCHELE O. OSCAR.....30<sup>TH</sup> CLAIMANT  
WILLIAM WAMBUA.....31<sup>ST</sup> CLAIMANT

VERSUS

DEVKI STEEL MILLS LIMITED.....RESPONDENT

### RULING

1. The Claimant/Applicant in the application dated 12<sup>th</sup> February, 2021 seeks to substitute the 28<sup>th</sup> Claimant whose name had been erroneously duplicated as the 8<sup>th</sup> claimant with one Alfred Onchiri whose name had erroneously been omitted due to counsel's honest mistake.
2. Secondly, the claimant wishes to amend the memorandum of claim to bring to the attention of the Court material facts as per the draft Amended Memorandum of Claim.
3. Further, the claimant wishes to amend their tabulations in accordance with the Collective Bargaining Agreement which was not in their possession at the time of filing the claim as reflected in the annexed schedule to the draft Memorandum of Claim.
4. That the intended amendments do not alter the claimants' suit to introduce a new one and are intended to help the Court determine the suit.
5. The application is supported on grounds set out on the face of the application and annexed supporting affidavit of the applicant.
6. The respondent opposes the application vide grounds of opposition duly filed in which it stated that the application is an abuse of Court process in that the application which is disguised as an application for amendment of pleadings is in reality an attempt to put on board Mr. Alfred Onchiri as a claimant in violation of Section 90 of the Employment Act, 2007 in that three (3) years period within which the said claimant would have lawfully filed his suit have lapsed. Thus the claim by the intended claimant is time barred and ought not to be admitted.
7. The respondent does not deal with the other amendments sought by the applicant in the Draft Amended Statement of Claim.
8. The suit was filed on 4<sup>th</sup> July, 2017 and the cause of action derived from the statement of Claim is that the respondent unlawfully and unfairly terminated the employment of the claimants on various dates depicted in appendix '1' to the claim in the year 2014. In terms of the said list, the intended claimant Alfred Onchiri is depicted as number 7 and is described as a Furnace Charger who was employed by the respondent on 26/4/2011 and his employment was terminated on 15/11/2014 and had served the respondent for three years.
9. It is evident from the Statement of Claim that Claimant number 8 Charles Kwendo Masinde had been duplicated as claimant number 28 and in the process, the advocate erroneously omitted to include the name of Alfred Onchiri on the face of the Statement of Claim.
10. However, the name of Alfred Onchiri was included in the attached list of claimants referenced in the Statement of Claim at paragraph 1. The paragraph states: -

**“The respondent wrongfully/unlawfully and/or unfairly terminated the claimants’ contract of employment on various dates as shown in Appendix 1 on allegation that the claimants had become redundant.”**

11. A literal interpretation of paragraph 6 of the Statement of Claim read together with paragraph 1 clearly demonstrate that the claim by Alfred Onchiri was brought on board together with those of his colleagues on the date the suit was filed on 4<sup>th</sup> July, 2017

12. The amendment sought to bring the name of the claimant on the first page of the Statement of Claim is in the Court's view a mere formality intended to bring order and clarity to the proceedings.
13. The Court is satisfied that the error to exclude the name of the claimant on the first page and a repetition of the name of Charles Kwendo Masinde was an honest error by counsel which cannot suffice to exclude Mr. Alfred Onchiri from the temple of justice.
14. The Court finds that the intended amendment is merited and is granted.
15. There is no justification brought forth by the respondent to exclude the rest of the intended amendments.
16. Accordingly, the application dated 12<sup>th</sup> February, 2021 is granted and the draft amended Statement of Claim deemed duly filed provided the applicant pays requisite Court fees.
17. Costs in the cause.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 21ST DAY OF OCTOBER, 2021.**

**MATHEWS N. NDUMA**

**JUDGE.**

**APPEARANCE**

**MR. ONDIGI FOR CLAIMANTS/APPLICANT**

**MR. K. MBERIA FOR RESPONDENTS**

**EKALE – COURT ASSISTANT**