



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRC.C/30/2019

CITATION: JOHN K KALASINGA AND 2 OTHERS VS MOI UNIVERSITY

RULING

ON 2021-07-09 BEFORE HON. JUSTICE J. N. ABUODHA

RULING

1. The Claimants by a Motion dated 3rd March, 2021 sought leave of the Court to amend the statements of claim and further that the Claimant be granted leave to file additional documents and supplementary witness statement.
2. The application was based on grounds among others that the 1st , 2nd and 3rd claimants despite pleading the breach of fundamental freedom and rights inadvertently omitted to plead the relief of damages for breach of the same.
3. The application therefore sought to align the pleadings with the law on express seeking of relief. The applicant further stated that they have discovered other documentary evidence that had been inadvertently omitted and which would assist the Court in arriving at a just trial.
4. The respondent opposed the application and filed a Replying Affidavit through the Petrolina Chepkwony the essence of which stated that the application sought to substantially and fundamentally alter the statement of claim filed on 24th July, 2019 and that the Claimant have introduced new facts by attaching fresh documents and a supplementary statement meant to resuscitate a weak or dying case.
5. The Court has carefully reviewed and considered the application and has noted that the amendment seeks to introduce prayer for damages for breach of rights under article 27 and 41 of the Constitution. The applicant further seeks leave to introduce supplementary list of documents and witness statements.
6. The Court notes that this matter had commenced and the 1st Claimant had given his evidence in chief on his behalf and on behalf of the other Claimants. He was in the process of being cross examined when the matter had to be adjourned due to technical hitches during virtual hearing.
7. It is correct as observed by Counsel for either party that an amendment can be allowed at any time in the proceedings if such amendment is necessary to bring all the issues in controversy between the parties. However, an amendment will not be allowed if doing will fundamentally alter the character of the suit by introducing totally new issues or pleas. The applicant seeks to amend the claim to add prayer for damages for violation of rights under article 27 and 40 of the Constitution.
8. Counsel for the Claimant submits that the factual foundation of those constitutional violations is already pleaded and that they only omitted to add the prayer for damages for the breaches. If that be the case, then the amendment is totally harmless and in any case the Claimant has given his evidence in chief and hopefully laid the background to persuade the Court in what way and to what extent the action of the respondent violated their constitutional rights. The rest is now left for submission. The amendment will therefore be allowed to that extent only.
9. Concerning leave to introduce supplementary documents and witness statement the court is of the view that no sufficient reason has been put forward why these documents were not brought forward with the claim. The Court has perused the list of documents and they seem to comprise of official documents the claimants must have interacted with prior to the filing of this claim hence it must have been within their reasonable contemplation that they would be useful in pursuing their claim. No explanation has been tendered why the Claimants did not file them with the suit or subsequently thereafter before commencement of the trial.

10. To introduce the documents and supplementary witness statement at this stage where the Claimant has already given his evidence in chief will convolute the matter. This prayer is therefore rejected.

11. In conclusion the application is allowed only to the extent that the claim will be amended to include prayer for damages for violation of rights and fundamental freedoms under article 27 and 41 of the Constitution,

12. It is so ordered.

DATED AT ELDORET THIS 19TH DAY OF OCTOBER, 2021 DELIVERED AT ELDORET THIS 19TH DAY OF OCTOBER, 2021

GIVEN UNDER MY HAND AND SEAL OF THIS COURT ON 2021-10-19 11:04:56

SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE: 2021-10-19 11:04:56