



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 643 OF 2016**

**BETWEEN**

**GEORGE OCHIENG' OWITL.....CLAIMANT**

**VERSUS**

**CRESCENT TECH LIMITED.....RESPONDENT**

**RULING**

1. The Claimant seeks, through his Application filed on 23<sup>rd</sup> March 2021, to amend his Statement of Claim, to include a prayer for house allowance.
2. The Respondent is opposed to the Application. Through the Affidavit of Elizabeth Mwangi, Human Resource Manager, sworn on 24<sup>th</sup> June 2021, the Respondent holds that the prayer for house allowance is time-barred under Section 90 of the Employment Act, and that the Claimant was paid a consolidated monthly salary.
3. Parties agreed to have the Application considered and determined on the basis of Written Submissions and Affidavits on record. Ruling was reserved for 4<sup>th</sup> November 2021 but is ready and Parties have been notified of its delivery on the date indicated below.

**The Court Finds:** -

4. There is already on record a Claim filed on time, by the Claimant, seeking compensatory damages for unfair termination, and certain terminal benefits from the Respondent.
5. There is civil action or proceedings filed in Court within the prescribed period. The prayer for house allowance is not a separate civil action or proceedings, but simply represents a proposed amendment to the prayers, in the existing Claim.
6. Section 90 of the Act addresses civil actions and proceedings, not amendment to those actions and proceedings. Unless proposed amendment goes to the root of the actions or the proceedings, such as where amendment seeks to introduce completely new and unrelated Respondents; and where amendment would alter the whole character of the actions or proceedings - there is no reason why amendment to introduce a new prayer should be disallowed. The Claimant does not seek to alter the character of the Claim. It remains a Claim for unfair termination, whose pursuit is compensation and recovery of terminal dues. House allowance is a detail in those terminal dues. The Parties are the same Parties involved in the Claim from its inception.
7. Rule 14 of the E&LC [Procedure] Rules, 2016 allows for amendment of Pleadings at the initiative of the Parties, subject to certain conditions, or amendment at the initiative of the Court. The time-lines and other conditions in amendment of Pleadings, under Rule 14, do not include the limitation imposed under Section 90 of the Employment Act. Once a Claim has been filed within time, its amendment is not to be looked at from the perspective of Section 90.
8. Whether the Claimant was paid a gross, consolidated or net salary, inclusive or exclusive of the housing element, is a matter to be determined after hearing the Parties in full.
9. The Court is satisfied that the Application for amendment of the Claim is merited.

**IT IS ORDERED:** -

*a. The Draft Amended Statement of Claim shall be deemed as properly filed and served, within 14 days of the Claimant making payment of the requisite filing fees.*

*b. The Respondent may file and serve an Amended Statement of Response before the matter is scheduled for pre-trial directions.*

*c. Parties shall move the Court for pre-trial directions.*

**DATED, SIGNED AND RELEASED TO THE PARTIES AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 15<sup>TH</sup> DAY OF OCTOBER 2021.**

**James Rika**

**Judge**