



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 181 OF 2018

JAIRUS OJANGO OMUMU.....CLAIMANT

VERSUS

NATIONAL POLICE SERVICE COMMISSION.....RESPONDENT

RULING

1. The Claimant seeks some orders through his Notice of Motion dated 11<sup>th</sup> June 2021 and expressed to be brought under Rule 14(6) of the Employment and Labour Relations Court (Procedure) Rules, 2016. He seeks for orders that:

1. The leave be granted to the Claimant to amend his Statement of Claim dated 21<sup>st</sup> February 2018.
2. The Claimant be at liberty to file such further amended Statement of Claim within 7 days.
3. The Respondent be at liberty to file amended Reply thereon within such time as the Honourable Court may direct.
4. Cost of this application be provided for.

2. The application is premised on the grounds pleadings herein are closed and that the Statement of Claim dated 21<sup>st</sup> February 2018, as presently formulated does not bring out sufficiently the correct position of facts relevant in resolving issues in dispute between the Claimant and the Respondent. The Claimant asserts he is desirous of amending the statement of Claim in order to reflect the true and correct position and that the amendments to the aforesaid Statement of Claim will enable the real issues in controversy to be sufficiently brought out for determination by this Honourable Court. He states that the Respondent shall not suffer any prejudice by reason of the proposed amendments and that this is a fit exercise of the Honourable Court's discretion in favour of the Claimant. The application was further supported by the Affidavit of the Claimant.

3. The Respondent is opposed and filed a replying affidavit sworn by Eve Vivian Ouko an Advocate acting for the Respondent herein. She deposed that the amendments are not necessary for purposes of determining the real issues in dispute since the same were already canvassed in the Memorandum of Claim dated 2<sup>nd</sup> February 2018 and the Claimant will not be prejudiced if he is not allowed to amend the Memorandum of Claim. She deposed the amendments are not technical as alleged by the Claimant but seek to introduce new facts of further deductions 4 years after filing suit, which is prejudicial to the Respondent. She deposes the amendments are unfair and unjust to the Respondent who should not be subjected to endless litigation since there should be a conclusion to proceedings. She deposed that the Claimant herein filed had earlier on filed an Application dated 22<sup>nd</sup> February 2020 seeking to strike out the Respondents Defence but the Court rightly noted on 5<sup>th</sup> March 2020 when the Application came for Hearing, that the suit was a 2018 matter and that the last time parties were before Court, the Claimant had been expressly ordered to fix the matter for hearing and he should not be filing unnecessary applications. She deposed the matter was referred to the trial Court and the Judge ordered parties to obtain a hearing date and that the Claimant is once again going against clear orders of the Court by filing this Application which only seeks to delay this matter further to the detriment of the Respondent who should not be subjected to endless litigation. She deposed that this Application is an abuse of the Court process and a mere delaying tactic meant to defeat the Respondents efforts in having the matter settled and the Claimant is further wasting precious judicial time when there are clear orders and directives given to parties by the Court. She deposes that this Application further goes against this Honourable Court's overriding objective that suits should be handled expeditiously and she thus prays that the application be dismissed with costs to the Respondent.

4. The parties articulated the different positions through Mr. Shijenje for the Claimant and Miss Ouko for the Respondent when the matter came up for the hearing of the application yesterday 13<sup>th</sup> October 2021. In place of an *ex tempore* Ruling I reserved the same for this morning and proceed to render the decision. The principles that guide amendments of pleadings were well set out by the Court of Appeal in **Central Kenya Limited v Trust Bank Limited [2000] eKLR** as follows:-

*“A party is allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.” (Emphasis mine).*

5. The amendments that the Claimant seeks are for payment of a sum of Kshs. 11,172,458/- as gross pay for the remainder of the contract, Kshs. 100,000/- as leave allowances for 2017 and 2018, gratuity for the remainder of the term – Kshs. 2,078,077/-, unpaid gratuity at time of termination Kshs. 4,487,022/-, Kshs. 7,214,664/- as compensation, unremitted or reimbursed salary deductions as NSSF contributions – Kshs. 22,000/-, Kshs. 289,485/- being alleged unreimbursed WCPS contributions. The Claimant in the view of the Court has introduced by

this effort to amend, a new cause of action against the Respondent which attempt is made over 3 years since the case was instituted and over 4 years since the cause of action accrued. The Respondent has accrued the right to assert limitation of action. The surmise of the Court is that clearly the Claimant is not keen to have the case heard and has ignored directions from the Court to have the case fixed for hearing. This tactic of unwillingness to prosecute a matter does not permit all manner of applications to be made as all the applications do is clog precious judicial time with unnecessary rulings and misuse of resources which should be deployed to more deserving Court work like hearings and judgment writing. As the motion lacks merit it is dismissed and the costs of this application shall be borne by the Claimant. Since the matter is ripe for a full hearing parties are directed to obtain a hearing date at the Registry on invitation but not later than within 21 days of this Ruling for a hearing before any other Judge of this Court as the 2021 diary for this particular Court is full in respect to hearings.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF OCTOBER 2021**

**NZIOKI WA MAKAU**

**JUDGE**