



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2063 OF 2015

BERNARD OKEAH.....1ST CLAIMANT/APPLICANT

KENNEDY OTIENO.....2ND CLAIMANT/APPLICANT

BENARD RONO KIPROTICH.....3RD CLAIMANT/APPLICANT

PHOEBE WAITHIRA OMONDI.....4TH CLAIMANT/APPLICANT

BENSON MAINGI.....5TH CLAIMANT/APPLICANT

TERESIAH NJOKI KIRATU.....6TH CLAIMANT/APPLICANT

VERSUS

THE NATIONAL NURSES ASSOCIATION OF KENYA.....1ST RESPONDENT

GEORGE ODHIAMBO

JAEL OCHIENG,

BONIFACE WACHIRA

(All sued jointly as Trustees of the

National Nurses Association of Kenya).....2ND RESPONDENT

(Before Hon. Justice Hellen S. Wasilwa 26th February, 2020)

RULING

1. The Applicants filed a Notice of Motion on 23rd April, 2018 seeks the following orders:-

1. THAT the Claimant/Applicant's be granted leave to amend the Memorandum of Claim dated 19th November, 2015 in terms of the draft amended Memorandum of Claim.

2. THAT costs of the Application be in the cause.

2. The Application is premised on grounds that:-

1. At the time of filing the Claim, the Applicants had been sent on compulsory leave with accumulated and unpaid salaries which compulsory leave took an unreasonably long time forcing them to seek appropriate relief.

2. While filing the Memorandum of Claim on 20th November, 2015 they did not know that they had been terminated from employment as they were still on compulsory leave and as such they did not include reliefs for terminal benefits in their memorandum of claim.

3. The prayers sought in their application dated 20th November, 2015 were not granted in the Ruling delivered on 4th March, 2016.

4. Since 28th May, 2015 when the 1st Respondent through its official sent emails to the Applicants asking them to proceed on compulsory leave, they have never been recalled for disciplinary proceedings or recalled to their respective stations of work. This therefore implies that they were terminated.

5. They did not know that they had been terminated thus they averred under paragraph 27 of their Memorandum of Claim that they would seek leave to amend their claim.

6. It is in the interest of justice that leave be granted to the Claimants/Applicants to amend the memorandum of claim.

3. The Application is supported by the Affidavit of Bernard Okeah sworn on 3rd April, 2018 in which he reiterates the grounds set out in the application.

4. In response to the application, the 1st Respondent filed a Replying affidavit sworn by Alfred Obuya Obengo the 1st Respondent's National Chairman on 23rd July, 2018. He depones that the prayers sought on the amended memorandum of claim are meant to change the character of the claim.

5. He avers that the Applicants in their letter dated 8th June 2015 do not recognise the 1st Respondent's officials and that they were invited for a meeting on 6th June, 2015 which they refused to attend.

6. He avers that vide the letter dated 3rd November, 2015 filed in Court on 20th June, 2016 the Applicants were invited for disciplinary hearing which they declined.

7. He further avers that the Applicants are guilty of inordinate delay and the Court should not assist them to benefit from the delay.

8. He further avers that under Section 44 of the Societies Act, an extract from the Registrar of Societies is evident as to who the Respondent's office bearers are.

9. He avers that the intended amendment sought will only cause the Respondents prejudice and injustice for reason that since filing the suit in 2015. It is not now that the Applicants realise of the election into office of the 2nd Respondents which they were already aware of in May, 2015. He therefore contends that the amendment sought is only meant to waste time and is incompetent.

Applicants' submissions

10. The Applicants submit that the contents of paragraph 27 of their Memorandum of Claim are a clear indication that the Respondents had known that the Applicants would amend their claim.

11. They aver that there shall not be any alteration of the character of the claim as alleged by the Respondents and should there be any such change, they shall have a chance to respond to alleged changes in the character of the claim.

12. They submit that there has been no delay in filing the instant application and that Respondents have not proved that there has been any delay as required under Section 107 (1) and 107 (2) of the Evidence Act.

13. They submit that it is clear from the court file that there have been proceedings in this suit which include the filing of applications by persons who aren't the Claimants seeking to be enjoined in the suit and urging the court to find that Jeremiah Maina committed perjury. It is their submission that these applications were not expeditiously determined.

14. They submit that they sought to fix the matter for mention on 23rd November, 2017 to amend the claim but the Respondents still opposed the oral application necessitating the filing of the current application.

Respondents' submissions

15. The Respondents submit that the application is bad in law and that the Applicants are guilty of inordinate delay thus the Court should not assist them to benefit from the delay and laches. The Respondents rely on the cases of **Omar v E.A. Cargo Handling Services Ltd [1985] KLR 837** where the Court declined an application to amend coupled by delay.

16. They submit that the Applicants' intended amendment shall delay the case from proceedings to full hearing. They submit that the Court's discretion to allow amendment must be exercised rationally and that allowing the Applicant to amend their claim after 3 years and change the character of the claim would defeat justice. They urge the Court to find that the application 3rd April, 2018 lacks merit and should be dismissed.

17. I have considered the averments of both Parties. I find that the application to amend the claim will not in any way prejudice the Respondents, as they will have an opportunity to respond to the same.

18. In the circumstances, the application to amend the Claim is allowed and the same be done within 30 days. In default the Claim to proceed as it is.

19. Costs in the cause.

Dated and delivered in open Court this 26th day of February, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties