



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 171 OF 2018

(Before Hon. Justice Mathews N. Nduma)

GEORGE OLILO.....CLAIMANT

VERSUS

KISUMU NATIONAL POLYTECHNIC.....RESPONDENT

RULING

1. Application dated 12th April 2019, seeks to amend the suit as set out in the draft amended memorandum of claim attached to the application.
2. The grounds upon which the proposed amendments are premised are set out on the face of the application and the supporting affidavit of the claimant. In the main, the applicant states that the amendment is necessary to bring out the real issues in the matter. The amendments are likely to affect the outcome of the case. No prejudice shall be occasioned to the respondent as they will be able to amend their defence and the leave to amend is sought in good faith.
3. Respondent filed grounds of position to the intended amendments stating that the application to amend is unmerited the claimant having failed to demonstrate any inadvertence or genuine mistake necessitating amendments.
4. That the application is tainted with bad faith and material non-disclosure. The case was filed in April 2016 and a response in June 2017. No step was taken to set the matter down for hearing. The application be dismissed as it would cause injustice to the respondent.
5. Rule 13 of the Employment and Labour Relations Court (procedure) Rules 2016 provides:

“(6) A party may amend pleadings before service or before the close of pleadings:

Provided that after close of pleadings, the party may only amend pleadings with the leave of the court on oral or formal application and the other party shall have a corresponding right to amend its pleadings”
6. The party that has brought the suit is referred to as the *dominus Litis* and owns and has full control of his or her own case. If such a party desires to amend its pleadings before or after close of pleadings, there is no impediment placed upon such a party by the rules of this court provided the respondent is granted corresponding leave to amend its statement of defence.
7. The court however retains the discretion to or not to allow the amendment for good reason. In **Bosire Ogero vs Royal Media Services HCCC 292 of 2013 (2015) eKLR**, the court held that the amendment application must be in good faith.
8. The respondent in this case argues that the claimant frustrated conciliation efforts to settle the matter out of court and therefore the intended amendment is an afterthought brought in bad faith and would only serve to delay the matter and cause the respondent increased expenses.
9. Respondent relies on the case of **Patel vs Amin Nairobi HCC 159 of 1981**, where it was held that an amendment must be sought at the earliest possible moment.
10. In the present matter, upon closure of pleadings parties were engaged in conciliation efforts which have come a clobber. In the scale of things regarding backlog in our courts today taking into account the provisions of Article 159 of the constitution of Kenya 2010:

“(2) in exercising judicial authority, the courts and tribunals shall be guided by the following principles:

(a) Justice shall not be delayed;

(b) Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted”

11. This matter cannot be said to have been inordinately delayed by the conduct of the claimant in engaging the respondent in conciliation efforts before embarking to prosecute the suit before court upon failure of the conciliation effort.

12. The grounds advanced by the respondent to block the claimant from perfecting his suit before hearing and determination lack merit and the application to amend is granted.

13. The draft amended statement of claim is deemed as filed subject to payment of requisite fees and the respondent is granted corresponding leave to file amended statement of defence within 21 days of this ruling.

14. Costs in the cause.

Ruling Dated, Signed and delivered at Nairobi this 13th day of May, 2020

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

Mathews N. Nduma

Judge

Appearances

Mr. Mwamu for Claimant/Applicant

Mr. Ochieng for Respondent

Chrispo – Court Clerk