

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 246 OF 2018

PETER MUCHIRA KARUGUMI.....CLAIMANT

VERSUS

1. KIRINYAGA COUNTY GOVERNMENT

2. COUNTY GOVERNOR KIRINYAGA COUNTY.....RESPONDENTS

RULING

1. The Claimant seeks to amend the claim and include the aspect of termination as the issue of suspension which obtained at the time of filing had been affected and the Claimant now sought damages. The Claimant sought leave to amend and argued that in opposing the motion, the Respondents had indicated that this was a new cause of action and inconsistent with the cause of action. It was argued that it was the Respondents mischief that caused the Claimant to change the claim while the suit is pending as the Claimant had no option but to change the prayers sought and pleadings. The Claimant submitted that the Respondents would have leave to amend their defence as they deem fit and would thus not suffer any prejudice. The Claimant submitted through counsel that the Respondents cannot have their cake and eat it too.

2. The Respondents asserted that the motion was opposed and they had filed grounds of opposition. It was submitted that the amendment sought dealt with termination whereas the claim before the court dealt with suspension which was a totally different thing. The Respondents submitted that there cannot be a prayer to amend a suit for a cause of action that arose after the suit was filed. The Respondents submitted that the amendment sought could only be allowed if the cause of action arose from the same facts. The Respondents cited Order 8 Rule 3(5) and stated that the Claimant should have withdrawn the suit and filed a new one.

3. In reply, counsel for the Claimant submitted that there was no introduction of a new cause of action and that the Claimant had no option but to seek an amendment and that the application was merited.

4. The Ruling was reserved to today. The amendment sought is to amend the prayers sought in the claim which related to the suspension through the letter of suspension dated 28th June 2018. However, through a letter dated the 7th August 2018, the 2nd Respondent terminated the services of the Claimant as an executive committee member for Transport, Roads and Public Works in the 1st Respondent. The Claimant argued that the amendment sought was necessary to enable him introduce the issue of termination and enable the court to determine the matter between the parties in the suit. The Respondents on their part argued that the amendment sought was introducing a new cause of action which was not permitted. Under Order 8 subrule (3)(5), there is provision as follows:-

An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment. (underline mine)

5. The proposed amendment arises substantially out of the same facts as the cause of action in respect of which relief had been claimed by the Claimant. The proposed amendment is therefore permissible and the authorities cited by the Respondents distinguishable. I therefore grant the prayers sought and permit the Claimant to file an amended claim within 7 days of this Ruling and the Respondents are at liberty to file an amended response within 14 days of service of the amended claim. Costs for the motion will be in the cause.

It is so ordered.

Dated and delivered at Nyeri this 24th day of January 2019

Nzioki wa Makau

JUDGE