



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 263 OF 2017**

*(Before Hon. Justice Mathews N. Nduma)*

**RODGERS WAMBWALABA ALUKHABA.....CLAIMANT**

**VERSUS**

**ONE ACRE FUND KENYA.....RESPONDENT**

**RULING**

1. Upon closure of the claimant's case, the claimant's advocate made an oral application to amend paragraph C (v) of the respondent to read Kshs 161,147 in place of Kshs 68,166 contained in the statement of claim. The application was based on the evidence placed before court by the claimant. The claimant prayed the court to invoke inherent powers of the court under *Article 159* of the constitution.
2. Mr. Shivoka for the respondent opposed the application stating that it was irregular since it is being made after closure of claimant's case. That *Article 159* cannot be invoked where clear rules of court provide the manner amendment are to be sought.
3. However, the counsel for the claimant submitted that *Section 100 of the Civil Procedure Act* allows amendments to be made due to slip or inadvertence. That no prejudice would be suffered by the respondent that cannot be remedied by way of costs.
4. The court has considered the competing arguments and applicable rules of procedure and finds that the general rule for amendment of proceedings is that pleadings may be amended without leave before closure of pleadings and with leave of court after closure of pleadings and before judgment of the court.
5. Clearly, the matter sought to be amended is an apparent error by counsel in drafting pleadings and the amendment is consistent with the testimony by the claimant.
6. The respondent shall suffer no prejudice by fact of the amendment since it is yet to prefer its defence before court and is at liberty to amend its statement of defence and counter claim before the suit proceeds to defence hearing.
7. Accordingly, the application to amend the statement of claim is granted and paragraph C (v) presently reading Kshs. 68,166 is replaced by a figure of Kshs 161,147.
8. Costs in the cause.

**Ruling Dated, Signed and delivered this 21<sup>st</sup> day of March, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Namatsi for the claimant

Mr. Shifuoka for respondent

Chrispo – Court Clerk