

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 127 OF 2018

REGINA NUNDU NTHEKANI.....CLAIMANT

- VERSUS -

MRS. RASMITA SHAH.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 19th July, 2019)

RULING

The respondent filed on 23.04.2019 the application dated 18.04.2019 through Bahati Mwamuye & Associates. The applicant prays for orders:

- 1) That the amended statement of claim dated 09.04.2019 filed on 09.04.2019 and served on the respondent on 11.04.2019 be struck out.
- 2) That the Honourable Court be pleased to issue any other orders ancillary to the above that the Honourable Court may deem just and expedient to issue.
- 3) That costs of the application be awarded to the applicant as against the claimant.

The application is based on the attached respondent's affidavit and upon the following grounds:

- a) The amended statement was filed after close of pleadings as per rule 13(4) of the Employment and Labour Relations Court(Procedure) Rules, 2016 because it was filed and served after lapsing of 14 days from service the response to the statement of claim. Further leave to amend was not granted as per rule 14 (6) of the Rules.
- b) Leave was mandatory.

The claimant opposed the application by filing on 13.05.2019 the grounds of opposition through Maosa & Company Advocates. It was urged that the issues raised are procedural and as per Article 159 of the Constitution, the Court should advance substantive justice. Further, the reply to response was filed on 27.03.2019 and the amended statement of claim was filed on 09.04.2019 prior to lapsing of 14 days in rule 13(4) so that pleadings had not closed as was alleged for the applicant.

It is clear that under rule 14 (6) a party can amend pleadings before service or before close of pleadings. Rule 13(4) provides that pleadings will close 14 days after service of a reply to the response (which may be served in 7 days after service of the response). In this case, the reply was filed and indeed the applicant does not deny that the reply had been filed and 14 days had not lapsed. Thus pleadings had not closed. The Court finds that the claimant was entitled to amend the statement of claim without leave. Further the Court finds that Article 159 on substantive justice without regard to procedural technicalities apply in the present case.

In conclusion the application is hereby dismissed with costs to the claimant.

Signed, dated and delivered in court at Nairobi this Friday 19th July, 2019.

BYRAM ONGAYA

JUDGE