



**REPUBLIC OF KENYA**

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

**CASE NO.744 OF 2012**

**(BEFORE HON. JUSTICE MATHEWS N. NDUMA)**

**KENYA BUILDING CONSTRUCTION TIMBER**

**AND FURNITURE INDUSTRIES EMPLOYEES UNION.....CLAIMANT**

**VERSUS**

**KARTAR SINGH DHUPAR.....RESPONDENT**

**RULING**

1. The application dated 22<sup>nd</sup> August, 2017 seeks to have the Memorandum of Claim amended to include a prayer for payment of three (3) months maternity leave.
2. The matter is partly heard on 18<sup>th</sup> May, 2017 when the court stood down the claimant while testifying in Chief and it became apparent from her testimony that she had given birth to a child prior to termination of her employment and had not been granted the mandatory three (3) months maternity leave by the Respondent.
3. There is no sound basis for opposing the application to amend in the replying affidavit of Mr. Nirmal Singh Dhupah.
4. The Claimant was represented by M/s. Chege advocate who correctly noted during the hearing of the suit the need to amend the memorandum of claim to include a matter that arose thereof and had not been pleaded.
5. The facts of the case as recorded are clear and is disingenuous of the applicant to attribute the proposed amendment to prompting by the court.
6. It is trite law that an amendment may be made at anytime before judgement provided the said amendment does not prejudice a party in a manner that cannot be remedied by way of costs.
7. The application to amend is granted and the matter to proceed before any Judge in Nairobi since the trial Judge has left the station.

**Dated and Signed in Kisumu this 1<sup>st</sup> day of February, 2018**

**Mathews N. Nduma**

**Judge**

**Delivered and signed in Nairobi this 16th day of February, 2018**

**Maureen Onyango**

**Judge**

**Appearances**

M/s. Chege for Claimant

Koki for Respondent

Anne Njung'e – Court Clerk