



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1262 OF 2013

FRED OBARE.....CLAIMANT

v

DEPUTY VICE-CHANCELLOR (ADMINISTRATION),

KENYATTA UNIVERSITY.....1st RESPONDENT

KENYATTA UNIVERSITY.....2nd RESPONDENT

RULING

1. Fred Obare (applicant) sued the Deputy Vice-Chancellor (Administration) and Kenyatta University (Respondents) on 12 August 2013 and he stated the issues in dispute as Whether the involuntary resignation of the Claimant due to the Respondents illegalities entitles the Claimant to be paid his entitlements, severance and other retirement benefits as stated by law and the terms of service.
2. The Respondents filed a Response on 13 September 2013.
3. On 11 May 2015, the Respondents filed an application seeking to amend the Memorandum of Response and leave was granted on 16 March 2017. The Amended Response and Counterclaim was filed on 31 March 2017.
4. The applicant filed a *Reply and Response to the Counterclaim* on 24 April 2017.
5. On 9 January 2018, the applicant filed a motion seeking
 1. **THAT** the Claimant/Applicant be granted leave to amend his memorandum of claim dated 8th August, 2013 filed herein as per the amended Memorandum of Claim annexed hereto.
 2. **THAT** the Memorandum of Claim annexed hereto be deemed as having been duly filed and served upon payment of the requisite court fees.
 3. **THAT** the Respondents' be at liberty to file a Reply to Amended Memorandum of Claim if need be.
 4. **THAT** the costs of this application be in the cause.
6. The Respondents filed grounds of opposition to the application on 26 January 2018, and arguments were taken on 29 January 2018.
7. The facts presented by the parties are broadly not in dispute.
8. The applicant had in an earlier suit, Nairobi Cause No. 240 of 2009, *Fred Obare v Kenyatta University & Ar.* challenged his suspension by the Respondents. The Court found in his favour.
9. The Respondents were not satisfied with the judgment and lodged an appeal with the Court of Appeal. The Court of Appeal set aside the judgment of the Employment and Labour Relations Court (*Kenyatta University & Ar v Fred Obare* (2017) eKLR).
10. The Employment and Labour Relations Court had in the meantime granted stay of execution pending appeal in Nairobi Cause No. 240 of 2009, *Fred Obare v Kenyatta University & Ar.* on condition that half the decretal sum be deposited into a bank account in the names of the parties' advocates.

11. The applicant now wants to raise a claim/entitlement to the amount which was deposited as part of the stay in that appeal in this Cause.
12. The instant Cause is anchored on constructive dismissal, and not unlawful suspension, which was the gravamen of the applicant's case in Nairobi Cause No. 240 of 2009, *Fred Obare v Kenyatta University & Ar.*
13. In the view of the Court, that amount (or entitlement) has no legal place in the current proceedings. The money was to secure satisfaction of a decree in a suit for unlawful suspension, which the Court of Appeal has set aside.
14. Further, although amendments are generally allowed especially at the early stages of the proceedings, the intended amendments by the applicant would only serve to obfuscate the issues in dispute and prolong the hearing of the Cause.
15. The Court in the event dismisses the application dated 8 January 2018 with no order as to costs.

Delivered, dated and signed in Nairobi on this 9th day of February 2018.

Radido Stephen

Judge

Appearances

Applicant	In person
For Respondents	Mr. Mwangi instructed by Mohamed Muigai Advocates
Court Assistant	Lindsey