

REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1395 OF 2016

(Before Hon. Lady Justice Maureen Onyango)

PETER BARASA & 4 OTHERS.....CLAIMANT

-VERSUS-

FUTONS & FURNITURE COMPANY LIMITED.....RESPONDENT

RULING

Before me for determination is an application dated 22nd August 2017 seeking the following orders –

1. That the amended statement of claim dated 7th September 2016 be struck out and judgment be entered accordingly in favour of the respondent/applicant
2. That costs be in the cause.

The application is supported by the grounds on the face thereof and affidavit of NASHIR KASSAM, the Manager of the respondent.

In both the grounds and the affidavit in support of the application, the respondent avers that the amended statement of claim sought to be struck out is an abuse of court process and does not comply with the rules governing amendments and is fatally defective on grounds that it does not reveal who the four other claimants are, that this is prejudicial to the respondent and that the amendments contain facts outside the initial facts presented to court thus forming an entirely new case.

The claimants' counsel was served but did not respond to the application.

I have looked at the amendments. It would appear as if the claimants have filed a substituted claim. The subject matter is however the same being the termination of employment of the claimants. What was not done is to name the four others. This is a matter that can be resolved by way of amendment. Under Section 40 (1) of the Employment and Labour Relations Act, as read with Section 3, this court is espoused to apply substantive justice without undue regard to technicalities.

The principles of striking out pleadings were set out in D. T. DOBIE & COMPANY (K) LTD -VS- MUCHINA per Madan J. A as follows –

“As the power to strike out pleadings is exercised without the court being fully informed on the merits of the case through discovery and oral evidence, it should be used sparingly and cautiously.”

In the present cause, caution and justice demand that the claimants be granted an opportunity to remedy the defect in the pleadings and to prosecute their claim so that it can be decided on the merits.

I am further convinced that the respondent has not been prejudiced by the amended statement of claim as it has filed an elaborate reply to the said amended statement of claim.

For these reasons I find the application unmerited and dismiss it with no order for costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 11TH DAY OF MAY 2018

MAUREEN ONYANGO

JUDGE