



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1995 OF 2017**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 25<sup>th</sup> October 2018)**

**SELINA MUSUNGU OKWISYA.....CLAIMANT**

**VERSUS**

**DOMINIC NJUGUNA MBIKI**

**T/A MBIKI NJUGUNA & COMPANY ADVOCATES.....RESPONDENT**

**RULING**

1. The Application before Court is the chamber Summons filed by the Respondent/Applicant herein under Section 3A of the Civil Procedure Act Order VI rule II, Order VI Rule 13 and Order VIA rule 3 of the Civil Procedure Rules and all other enabling provisions of the law.
2. The Applicant seeks that the Amended Statement of Claim dated 13<sup>th</sup> March 2018 be struck out on the grounds that the same was filed and served on 19/3/2018 after close of pleadings without leave of Court contrary to the law.
3. The Respondent/Claimant opposed the Application on the ground that the law on limitation of amendment of pleadings is an issue of technicality, which has no place in modern jurisprudence. That the Court must therefore consider the substance of the claim rather than the technicality raised.
4. I note that indeed the claim was filed on 6/10/2017 and a defence filed on 27/11/2017. The Claimant proceeded to file an Amended Claim on 13/3/2018 without seeking leave of this Court.
5. I have considered the averments of both parties. The Application is filed under provisions of law not known. It is however, my finding that the Claimant proceeded to amend her claim without seeking leave of Court as expected under Order 8 of the Civil Procedure Rules.
6. That notwithstanding, the amendment done will not greatly prejudice the Respondent/Applicants herein as they will have a chance to respond to the new facts introduced.
7. In **Eastern Bakery vs Castelino (1958) E.A 461**, Sir Kenneth O'Conner, President of the then Court of Appeal of East Africa Opined at Page 462:-

***“It will be sufficient..... to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side and that there is no injustice if the other side can be compensated by costs”.***

8. I do agree with the above proposition and find that the amendment though effected without leave will not prejudice the Respondents. I will allow it and give Respondents a chance to respond to the same.
9. Costs in the cause.

**Dated and delivered in open Court this 25<sup>th</sup> day of October, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Rotich holding brief for Mr. Mungai for Respondent – Present

Otieno holding brief for Miss Ogera for Claimant – Present