

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 127 OF 2017

LUCY METHU.....CLAIMANT /APPLICANT

VERSUS

COUNTY COMMISSIONER NYANDARUA COUNTY.....1ST RESPONDENT

CABINET SECRETARY MINISTRY OF INTERIOR &

CORDINATION OF NATIONAL GOVERNMENT.....2ND RESPONDENT

PUBLIC SERVICE COMMISSION.....3RD RESPONDENT

WANJIKU MUHIA NYANDARUA WOMEN REPRESENTATIVE....4TH RESPONDENT

RULING

1. The Petitioner/Applicant herein seeks leave to amend. Leave therefor had been granted on 5th April 2018 and the applicant failed to amend within the time granted by the Court. The motion was opposed by the 1st and 2nd Respondents who filed a replying affidavit on 12th November 2018 sworn by Dr. Eng. Karanja Kibicho, CBS the Principal Secretary in the Ministry of Interior & Coordination of National Government.

2. The leave to amend is a discretionary remedy. A court should not grant a request for amendment of pleadings if the proposed amendment would have the effect of creating a new cause of action which is time- barred as this is *contra statute*. An amendment as sought should be freely allowed provided it is not made in bad faith and if it will not occasion injustice to the other party that cannot be compensated by way of costs. In other words, an amendment that will cause injustice to the other side should not be allowed.

3. The Petitioner herein failed to meet a timeline set by the court. That of itself is not sufficient cause to deny the leave to amend sought. The Petitioner has not annexed a draft petition showing the intended amendment. I cannot therefore discern if the amendment is one that will cause the Respondents any injustice or one that will introduce a fresh cause of action that is time barred. It is not clear if the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties. From the foregoing it is clear the motion by the Petitioner/Applicant is devoid of merit and is dismissed. Each party to bear their own costs for the application.

It is so ordered.

Dated and delivered at Nyeri this 6th day of December 2018

Nzioki wa Makau

JUDGE