



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1830 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 5th December, 2018)

ANTHONY MBUGUA KAMAU.....CLAIMANT

-VERSUS-

NAIROBI CITY WATER & SEWAGE COMPANY LIMITED.....RESPONDENT

RULING

1. Before this Court is the Claimant's Notice of Motion Application dated 23rd May, 2018 and filed under Section 3A and 100 of the Civil Procedure Act, Cap 21 Laws of Kenya, under Section 20 of the Employment and Labour Relations Court Act 2014 and the ELRC (Procedure) R 2016 seeking the following orders;-

- 1. THAT the Claimant/Applicant be granted leave to amend his Memorandum of Claim dated 16th October, 2014 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 Respondents¹ 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.**

2. The application is premised on the following grounds;-

- A. That the amends are necessary for the purpose of determining the real issues between the parties.**
- B. That the Amendments are necessary to correct errors in calculations and labeling of reliefs sought by the Claimant.**
- C. That the Amendments concern undisputed facts as between the Claimant and the Respondent.**
- D. The Amendments would not occasion an injustice against the Respondent or in any way be prejudicial to the Respondent.**
- E. That it will serve ends of Justice to grant Leave to the Claimant to amend his Claim.**

3. The application is also supported by the Supporting Affidavit of the Claimant herein who has deponed to issues as per the grounds herein. He avers that the amendments envisaged will not prejudice the Respondents as they are for issues not contested such as change of the firm of Advocates representing him, the status of the Respondent, an inclusion of a claim for salary unpaid and general claim for unfair termination and to correct errors on calculations.

4. The Respondent opposed this application through their Grounds of Opposition filed in Court on 10th July 2014 as follows:-

- 1. The Claimant's amendments are substantial and greatly affect the substratum of the Claim and not merely errors as alleged.**
- 2. The amounts amended are not mere errors in calculations but substantive changes to the reliefs sought.**

3. Based on the foregoing these amendments amount to the Claimant filing a fresh suit beyond the time limit in accordance with the Employment Act.

4. The Application is greatly prejudicial and amounts to an abuse of the Court process.

5. The parties have filed their respective submissions, which I have considered. The law guiding this Court on whether to allow or not to allow an amendment of pleadings is Rule 14(6) of the ELRC (Procedure) Rules which states as follows:-

6)“A party may amend pleadings before service or before the close of pleadings:

Provided that after the close of pleadings, the party may only amend pleadings with the leave of the Court on oral or formal application, and the other party shall have a corresponding right to amend its pleadings”.

6. It is also imperative when considering whether or not to allow amendments to pleadings to ensure that the averments sought to be introduced do not on any way prejudice the Respondents. The Claimants have submitted that they only want to make amendments to clarify certain issues to their claim and correct errors to the pleadings in good faith.

7. The general rule is that amendments should be allowed if the Court is satisfied that:-

a) ..”the party applying is not acting mala fides;

b) the amendments will not cause some injury to the other side which cannot be compensated by costs;

c) the amendment is not a device to abuse the court process;

d) the amendment is necessary for the purpose of determining the real question in controversy between the parties and avoid a multiplicity of suits;

e) and the amendment will not alter the character of the suit”.

8. This Court’s main duty is to do justice to the parties. When an amendment is meant to make issues clearer to the court then an amendment should be allowed. I note that the amendment intended will in no way prejudice the Respondents. The Respondents will also have an opportunity to respond accordingly. This Court should be aware that it should do justice without undue regard to technicalities. I find the application merited in the circumstances and I allow the same.

9. Costs shall be in the cause.

Dated and delivered in open Court this 5th day of December, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mbula holding brief for Kinyanjui for Claimant – Present

No appearance for Respondent