



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO 544 OF 2015**

**CONSOLIDATED WITH CAUSE NO 545 OF 2016**

**AND**

**CONSOLIDATED WITH CAUSE NO 546 OF 2016**

**MWANAHAMISI ATHMAN ALI .....CLAIMANT**

**VERSUS**

**MUUNGANO SOCIAL CLUB**

**t/a ALI BIN ABI TALIB NURSERY SCHOOL .....RESPONDENT**

**RULING**

**Introduction**

1. The application before the court is the Notice of Motion by the claimant dated 7.9.2016. It seeks for leave to amend the claim to enjoin Abbar Muhsin, Hussein B. Salim and Atmas Nasir and respondents to the suit in their capacity as the chairman, secretary and treasurer of the respondent social club. The motion is supported by the affidavit of the claimant.

2. The motion is opposed by the respondent vide the grounds of objection filed on 28.9.2016 which basically faults the procedure followed in seeking the joinder of the intended new persons. According to the respondent, there is no provision of the law or rules of procedure which provide for joinder of parties because parties to employment and labour relations are between parties who are well known to each other.

3. The motion was disposed of by written submissions filed by counsel for both parties. The counsel also agreed to have the outcome of this motion apply to ELRCC 546/2015 and 545 of 2015.

**Analysis and determination**

4. The issues for determination are whether:

**(a) Whether the motion is incompetent**

**(b) Whether the motion has merits and should be allowed**

**Incompetent motion.**

5. The claimant has submitted that the motion is brought under rule 14(b) of the rules of procedure of this court which allows for amendment of filed pleadings. According to him amendment to bring in a new defendant is proper. That even if the rules were deficient, the lacuna can be filled by Order 1 rule 10 of the Civil Procedure rules. I agree with that submission by the claimant and dismiss the objection by the respondent that new parties can be joined to a suit once it is filed. In my view there is nothing wrong with a motion which seeks leave to amend a memorandum of claim with a view to join a new party. Consequently, it is my finding that the motion is competently before the court.

**Merits**

6. The respondent never swore any affidavit to challenge the merits of the motion. I therefore grant the leave sought by the claimant. The order herein shall apply to ELRCC 545 of 2015 and 546 of 2015.

**Disposition**

7. For the reasons stated above, the Notice of Motion dated 7.9.2016 is allowed as prayed. No orders as to costs.

**Signed, dated and delivered at Mombasa this 13<sup>th</sup> day of January, 2017.**

**O.N. MAKAU**

**JUDGE**