



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 235 OF 2009

KENYA UNION OF DOMESTIC HOTELS EDUCATION

INSTITUTIONS, HOSPITALS AND ALLIED WORKERS (KUDHEIHA)
CLAIMANT

-VERSUS-

CATERING AND TOURISM DEVELOPMENT LEVY TOURISM
RESPONDENT

RULING

1. The claimant seeks to amend the statement of claim vide a notice of motion application filed on 13th July 2016.
2. The intention is to add certain particulars erroneously omitted in the original statement of claim.
3. The application is opposed vide grounds of opposition filed on 5th August 2016 to wit that the application is bad in law as it is time barred in terms of Section 90 of the Employment Act.
4. The principles of amendment were set out by the **Court of Appeal in Central Kenya Ltd –vs– Trust Bank & others, Appeal No. 222 of 1998** as follows:-
 - a) The amendments are necessary for determining the real question in controversy.
 - b) To avoid multiplicity of suits provided there has been no undue delay.
 - c) Only where no new or inconsistent cause of action is introduced that is, if new cause of action does not arise out of the same facts or substantially the same facts as a cause of action.
 - d) That no vested interest or accrued legal rights is affected; and
 - e) long as it does not occasion prejudice or injustice to the other side.
5. On the question of delay, the suit was filed on 22nd July 2009 and the amendment is being sought, more than seven (7) years from the date of filing.
6. The court has perused the draft amended memorandum of claim and the document intends to introduce only one new claim of Golden handshake in respect of all the claimants. All the other claims are not new and were in the memorandum of claim except that the figures have now been quantified in the amended

draft.

7. Considering the principles set out above, the court allows the proposed amendment except the claim for golden handshake which seeks to introduce a new cause of action after the limitation period. The particular amendment coming so late after the filing is likely to prejudice the respondent in a manner not likely to be remedied by way of costs.

8. The claimant is directed to file an amended memorandum of claim leaving out the prayer for the Golden handshake.

9. The respondent to file an amended response if any within 21 days of service.

10. Costs in the cause.

Dated at Nairobi this 12th day of July, 2017.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE