



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NO. 1677 OF 2012

JULIUS MICHAEL OOKO.....CLAIMANT

VERSUS

TATA CHEMICALS MAGADI LIMITED.....RESPONDENT

RULING

1. By a Notice of Motion dated 5th August, 2016 the claimant sought leave of court to amend the statement of claim as shown in the draft amendment of claim. The application was brought on the grounds among others that the amendment sought was necessary to bring the real issues between the parties before the court for effectual determination thereof. Further, that the amendment sought would not prejudice the respondent in anyway.

2. The respondent opposed the application and filed a replying affidavit through one John Kabere who deponed that he was the Human Resource Manager of the respondent. He stated in the main that the application to amend had been filed over four and half years after the acceptance of the claimant's resignation hence inordinately late.

3. In support of the application Mr Nyangoro for the applicant submitted that the proposed amendment was aimed at bringing before the court and to the knowledge of the respondent the entire quantum of the claimant's claim and that the proposed amendments will not prejudice or cause injustice to the respondent in any way. In support of the submission, Counsel relied on the case of **Eastern Bakery Vs Castetine [1958] EA 461** where the court stated:

"...amendments to pleadings sought before the hearing should be freely allowed; if they can be made without injustice to the other side and there is no injustice on the other side which cannot be compensated by costs",

Counsel further relied on the case of **Mediterranean Shipping Co SA Vs KPA [2008] Eklr.**

4. The respondent on its part submitted that there was inordinate delay of over four and half years. To support the submission on what constitutes inordinate delay counsel relied on the case of **Geoffrey Muriungi & Anor Vs John Rukunga [2016] eKLR** where it was stated that to discern inordinate delay it must be such delay that goes beyond acceptable limits given the nature of the act to be performed. Counsel further cited the case of **Moses Mwangi Kimaru Vs Shammi Kanjira pparambi Thomas & 2 Others [2014] eKLR** where it was stated that an application for amendment should be made at the earliest possible moments. And where there is delay in applying for amendment the plaintiff must give satisfactory reason for the delay. According to Counsel therefore, the amendment was tainted with delay

Judge

Delivered this 3rd day of November, 2017

Abuodha J. N.

Judge