



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 221 OF 2014

DR. MESHACK NYAMIKA ONG'UTICLAIMANT

VERSUS

KENYATTA NATIONAL HOSPITAL RESPONDENT

THE PERMANENT SECRETARY MINISTRY OF HEALTH.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RDRESPONDENT

Mr. Ondari for 1st respondent / objector

M/S Akino for 2nd & 3rd respondent

Mr. Nyaribo for claimant

RULING

1. The 1st respondent filed a notice of preliminary objection dated 9th September 2015 to wit;
2. The amended plaint substitutes the initial cause of action which is time barred under section 3(2) of the Public Authorities Limitation Act and section 4(1) of the limitation of Action Act.
3. The objection is opposed by the claimant.

Determination

4. The suit was filed in 2004 at the High Court where the matter has been pending until it was transferred to this court on 14th February 2014.
5. The claimant sought leave to amend the plaint and file an amended statement of claim in compliance with the Employment and Labour Relations Court (Procedure) rules, 2010 which apply in this court.
6. The amended statement of claim was filed on 16th March 2015.
7. The 3rd respondent filed an amended statement of defence and introduced a counter claim in the defence for the first time.
8. It is trite that pleadings may be amended at any time before judgment. Time does not run during the pendency of a suit in court.
9. The court is not satisfied that the amendments made by the claimant have introduced a new cause of action. The cause of action remains the same. It is the remedies sought that have varied in line with the pleadings done in the Employment and Labour Relations Court. The issue of time bar does not arise.

10. Quite to the contrary, it is the respondent who has introduced a fresh counterclaim that was hitherto not in the plaint. It is this counterclaim which may be time-barred. Since this matter was not canvassed by the parties, it will be dealt with during the hearing of the suit on the merits.
11. The preliminary objection by the 2nd respondent is dismissed. Costs in the cause.

Dated and Delivered at Nairobi this 5th day of February 2016.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE