



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
CAUSE NO.2004 OF 2015

ANTHONY OMARI ONGERA.....CLAIMANT

VERSUS

THE CHAIRPERSON TEACHERS SERVICE COMMISSION.....RESPONDENT

RULING

1. On 11th November 2015, the claimant filed Notice of Motion and Memorandum of Claim against the Chairperson Teachers Service Commission. By application and Notice of Motion dated 12th January 2016, the claimant is seeking for orders and leave to amend Notice of Motion and Memorandum of Claim both dated 9th November 2015 and filed on 11th November 2015.
2. The application is supported by the annexed affidavit of the claimant and on the grounds that the Teachers Service Commission is a corporate entity with capacity to sue and be sued in its corporate name thus its chairperson was improperly joined as a party in the suit. The error was genuine mistake not intended to mislead the court and that the claimant will add more particulars to his claim against the Teachers Service Commission (TSC) relating to his illegal dismissal. The amendment shall not prejudice the respondent and will enable the court to determine the real questions or issues in dispute.
3. That the claimant was employed by the TSC and under the law this is the corporate entity that should have been sued as the respondent. The error relate was innocent and in the interests of justice, the application be allowed to enable the court address the issues in dispute effectively.
4. On 16th February 2016 both parties attended court and by CONSENT agreed to the proposed amendments set out in the application dated 12th January 2016. The respondent was in agreement.
5. On this basis, the court allowed the application seeking amendments to the Notice of Motion and Memorandum of Claim both filed on 11th November 2015. The essence of the orders granted were to enable the claimant do as follows;
 - a. Amend Notice of Motion and Memorandum of Claim both dated 9th November 2015 and filed on 11th November 2015;
 - b. That amended Notice of Motion and Memorandum of Claim annexed hereto be deemed to be properly filed and served and admitted in record for that purpose
 - c. Costs in the cause

6. The court went on to direct the respondent to file responses and serve the claimant within 14 days and that upon service, the claimant had 7 days to reply thereto and further that parties should take hearing dates at the registry.

7. Upon perusal of application dated 12th January 2016 seeking amendment of Notice of Motion and the Memorandum of Claim, the alleged attachments do not exist. Further, following the orders of the court on 16th February 2016, no amended Notice of Motion and Amended Memorandum of Claim in the terms allowed by the court were filed. Such amendments to the pleadings do not exist in fact and in law. The basis and the grant of the orders for amendments were based on misrepresentation of key facts that there were attachments of the proposed amendments to the application of the claimant and dated 12th January 2016. Despite the apparent error, the parties have not addressed the same particularly the claimant, the supposed beneficiary of the apparent error and misrepresentation of matters before court.

8. Both parties have gone ahead to take directions with regard to the pending application. Upon analysis of the submissions, I find these grave errors. The claimant's submissions relate to *CLAIMANTS'S WRITTEN SUBMISSIONS ON THE AMENDED NOTICE OF MOTION APPLICATION DATED 12TH JANAURY 2016*. And the respondent in submissions has equally gone back to make responses with regard to the orders sought under the impugned application and one dated 12th January 2016.

9. The essence of matters set out above is that, the respondent is not formerly changed and remain THE CHAIRPERSON TEACHERS SERVICE COMMISSION and the allowed amendment as of 16th February 2016 have not been formalised to enable the parties move another step. To allow proceedings under the misconception that by change of the headings the same addresses what was intended vide application dated 12th January 2016 will be a serious omission in law. This is not a technicality that can be cured thus. A proper party must be sued for proceedings such as these to have basis. The consequence is severe as no valid orders can issue under such circumstances.

I hereby Order and Direct as follows;

- a. Parties shall abide by orders and directions issued on 16th February 2016.**
- b. The records filed after 16th February 2016 are hereby expunged.**
- c. The claimant shall meet costs of the respondent.**

Delivered in open court at Nairobi and dated this 19th day of September 2016.

M. MBARU

JUDGE

In the presence of

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