



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NUMBER 1315 OF 2011

GEORGE OMONDI MUNYALA..... CLAIMANT

VERSUS

KENYA POWER AND LIGHTING COMPANY.....RESPONDENT

RULING

1. On 16th December, 2014 I refused an application to amend the memorandum of response and directed that this matter proceeds on the basis of the pleadings on file.

2. This order triggered the present application seeking to set aside the said orders. The application is brought on the grounds that:-

(a) via an email of 1st December, 2014, the respondent informed its counsel that it had discovered from its records that the claimant owed the respondent the respondent Kshs.368,489/= at the time he was dismissed from employment.

(b) that this was a new and crucial information in respect of the matter that was not within the knowledge of the respondent at the time of preparing and filing the memorandum of defence.

3. Counsel for the claimant Ms. Oyombe submitted that on 16th December, 2014 when the matter came up for hearing, counsel for the claimant despite receiving the respondent's counsel's letter dated 4th December, 2014 seeking the claimant's counsel's indulgence to adjourn the matter in order to seek leave to amend the memorandum of claim, opposed the adjournment stating that the matter has always been adjourned at the instance of the respondent, a statement Ms. Oyombe submitted was false. According to counsel, the respondent had sought adjournment only twice.

4. Concerning leave to amend the memorandum of claim, counsel submitted that the court has power to grant leave to enable the respondent bring forth all the issues in controversy. Counsel further submitted that the claimant would not be prejudiced if the amendment sought was allowed. According to counsel an amendment can be allowed at any time in the proceedings.

5. Mr. Kariuki for the claimant opposed the application stating that the claimant filed the claim on 11th August, 2011 and served it on the respondent who filed their response on 2nd August, 2012 on the day the matter was slated for hearing. Counsel further observed that the respondent's advocate wrote to him concerning the adjournment and intention to apply for leave to amend, only a few days to 16th December, 2014 when again the matter was coming for hearing.

6. I have reviewed the history of this matter as minuted by the various Judges in whose hand the file has passed and noted that the matter has been adjourned for reasons ranging from those requested for by the respondent to some occasioned by the Court itself. It is therefore not true that the respondents is the one who has always asked for adjournment.

7. Regarding leave to amend, it is indeed true as submitted by Ms. Oyombe that an amendment can be allowed at any time in the proceedings provided the amendment would not cause the other party any prejudice.

8. In order to bring all the issues in controversy before the Court, a party should be allowed to amend their pleadings at any time. This matter has never been heard. It is a fresh matter hence it cannot be said that the amendment sought could change the nature of the defence or the claim in a way that the party affected by the amendment cannot make a corresponding amendment to reorganize his claim or defence in response to the amendment.

9. The Court will therefore allow the application dated 26th January, 2015 to the extent that the amended memorandum of response be filed and served within 14 days of this order with a corresponding right to the claimant to file an amended memorandum of claim if necessary.

10. It is so ordered.

Dated at Nairobi this 18th day of February 2015

Abuodha J. N.

Judge

Delivered this 18th day of February 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge