



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO. 273 OF 2014

(Before Hon. Justice Hellen S. Wasilwa on 7th May, 2015)

LEONARD GETHOI KAMWETIAPPLICANT CLAIMANT

VERSUS

NATIONAL BANK OF KENYA LIMITED1ST RESPONDENT

MUNIR SHEIKH AHMED2ND RESPONDENT

MOHAMED ABDIRAHMAN MOHAMED3RD RESPONDENT

RULING

1. The application before court is the one dated 23/1/2015. The application is brought by the Applicants herein through a Notice of Motion and brought under Article 159 (2)(d) of the Constitution and Section 12 of the Industrial Court Act and Rule 14(6) of the Industrial Court (Procedure) Rules 2010 and all other enabling provisions of law.

The Applicant seeks orders that:

(1) THAT the Honourable court be pleased to grant orders that the Applicant/Claimant be given leave to file the Amended Claim ex post facto and that consequently therefore the Amended Claim be deemed properly filed.

(2) That costs be costs in the cause.

2. The application is supported by the annexed affidavit of the Claimant and further grounds and reasons adduced at the hearing herein wherein the Claimant has explained why the leave to amend should be granted.

3. Specifically, the Applicant has told court that he wished to amend the claim to remove the 2nd and 3rd Respondents who are directors of the 1st Respondent and also introduce certain articles touching on Labour rights which were excluded in the original claim. The Applicant submitted that this will enable court to make a well-reasoned decision. That still, there are other pending cases in court which Applicant wishes to let the court be aware of.

4. The Respondents opposed this application. They filed their grounds of opposition dated 8/4/2015. They contend that the application is misconceived and mischievous – in that the amended claim was already filed on 24/12/2014 and subsequently served on them on 15/1/2015. It was then

that the Respondent became aware of these proceedings and subsequently filed a response to that Amended Claim on 6/2/2015. By that time, leave to amend had not been given. They aver that they have no problem to the inclusion of 2nd and 3rd Respondents but their contention is with introduction of Articles of the Constitution.

5. They submit that the application is a clear abuse of the court process and should not be allowed as some of evidence sought to be introduced will contravene orders given in case No. 1965/2914.

6. Having considered the submissions herein, this court falls back on the provisions of Section 12 of the Industrial Court Act which gives court jurisdiction to grant orders such as the one sought. Rule 14(6) of the Industrial Court Procedure Rules also provide that:

“A party may, with the leave of the Court, amend pleadings: Provided that where leave is granted to a party to amend any pleading, a responding party shall have a corresponding right of to amend that party’s pleadings”.

7. The Respondents have submitted that the Applicant should not be granted the orders sought since he had filed the Amended Claim without leave of court. That as it may be, the court’s primary duty is to do justice and based on the correct facts. The opposition to the stating of constitutional provisions in itself is a hindrance to the application of the rule of law as the court’s duty is to interpret the constitution and statutory provisions. Introduction of constitutional provisions will therefore aid the court in analyzing the same and reaching a proper conclusion.

In the case of **Kenya Cold Storage (1964) Limited vs Overseas Food Services (Africa) Limited Civil Case No. 414 of 1975**, the principle of amendment to pleadings was stated by Sachdeva Judge that:

“The general rule is that leave to amend will be granted if it will enable the real question in issue between the parties to be raised and where such amendment will not occasion injury to the opposite party except such as can be sufficiently compensated by costs----“.

This principal has been restated in other cases (see High Court CC No. 2/2005 – **Mechanized Systems Limited vs Guardian Bank Limited**), **Otieno vs Omoro, Civil Suit No. 52 of 1976** – etc).

8. In the instant case, the Respondents have not demonstrated any prejudice they stand to suffer if the application is allowed.

9. I find the application has merit and I allow it. As there is opposition to inclusion of certain evidence as granted in High Court Case No. 1965/1214 the same will not be introduced in the amendment.

However, the application to amend the claim is allowed. The same be done within 7 days from today. The Respondents have a right to reply within 14 days after service.

Read in open Court this 7th day of May, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Applicant present

Ngala holding brief for Makasila for Respondent