



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 1336 OF 2014**

**JANET PISOI KIKAYAYA.....**  
**CLAIMANT**

**VERSUS**

**LOCAL AUTHORITIES PROVIDENT FUND.....1<sup>ST</sup>**  
**RESPONDENT**

**DAVID KOROSS.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The respondents in this suit raised as preliminary the objection that by virtue of section 5 (8) of the Local Authorities Provident Fund Act, it was clear that the respondent named was not capable of being sued in the manner sought and pleaded by the claimant since the Act has clearly established a board which is the only entity bestowed with power to sue or be sued. Hence any purported suit against the fund in its own name must fail.
2. The claimants have since filed a Motion dated 21<sup>st</sup> July, 2015 seeking to amend the memorandum of claim to align the same with the provisions of section 5(8) of the Local Authorities Provident Fund Act. This is an acknowledgement by the claimant that the respondent was right in raising the objection.
3. Under article 159(2) (d) of the Constitution, in exercising judicial authority the Court is required among other things to administer justice with undue regard to procedural technicalities. A misjoinder is curable by amending the claim even if such amendment implies introducing a whole new party. The Court's attitude must always be more towards preserving a suit than kill it since a dispute heard and resolved on merit offers a more lasting solution than one decided on technicality.
4. This is not to say that a Court cannot in an appropriate case, dispose of a suit on technicality. Technicality the handmaiden of administration of justice especially in dealing with frivolous and vexatious claims merely brought up to misuse the Court process. The Court however before invoking the discretion to dispose of a suit on technicality, be persuaded that the omission, or misstep complained of cannot be cured by an amended and that the amendments if allowed would, occasion the party affected prejudice. If the omission or misstep is a mere inconvenience capable

of being assuaged by an award of costs, the Court would be reluctant to dispose of the suit on a technical point and award costs instead.

5. The respondent as currently cited in the suit and the Board are creatures of the Act. The Board is the juridical persona of the Fund an amendment to correct this technical anomaly cannot be said to be capable of occasioning the respondent undue prejudice incapable of compensation by an award of costs.

6. In the circumstances the Court disallows the preliminary objection and orders that the Motion dated 21<sup>st</sup> July, 2015 seeking an amendment of the memorandum of claim be allowed with costs to the respondent.

7. It is so ordered.

**Dated at Nairobi this 30<sup>th</sup> day of October 2015**

**Abuodha J. N.**

**Judge**

**Delivered this 30<sup>th</sup> day of October 2015**

**In the presence of:-**

.....**for the Claimant and**

.....**for the Respondent.**

**Abuodha J. N.**

**Judge**