



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1895 OF 2013

A M AMBOKA & 186CLAIMANT

-VERSUS-

KENYATTA UNIVERSITY.....RESPONDENT

ATTORNEY GENERAL.....3RD PARTY

AND

- 1. MICHAEL C. MATIKO**
- 2. PHILIP KIMANZIA**
- 3. JACKSON M. KWINGA**
- 4. MARGARET CHEGE**
- 5. SARAH WANJIRU GITAU**
- 6. MANASE OKOTH**
- 7. CAREN JANE ACHIENG**
- 8. DAVID K. GITHINJI**
- 9. MARY W. NDUNGU**
- 10. ANTONY MULI MUNYAO**
- 11. NDONYE NGUI MUATHE**
- 12. PETER KABIRU MUTURI**
- 13. TRYES MBAE KIRAITHE**
- 14. CHARLES NJOGU MWAURA**
- 15. TOM MONG'ARE**
- 16. VIRONICAH NYANGAU**
- 17. JULIUS K. KOSGEI**
- 18. RUTH NDUNGE KIOKO**
- 19. AGNES NJUGU-INI**
- 20. JAMES M. NYAGA**
- 21. MOSES KARIUKI NJOROGE**

Morintat for Claimant/Applicant

M/s Kabuthi for Respondent

M/s Kungu for 3rd party

RULING

1. By a notice of motion dated 17th January 2014, the 21 named Applicants seek to be enjoined in this suit.
2. The cause of action was initially filed as HCC at Nairobi Civil Suit No. 610 of 2002 and the cause of action arose on 1st April 2001, when the Claimants services were terminated pursuant to a retrenchment Notice dated 12th March, 2001.

The Plaintiffs claim collectively, the balance of terminal benefits itemized in the plaint dated 9th April 2002.

3. Simultaneous was filed an application dated 17th January, 2014 seeking amendment of the Plaint as per the draft attached thereof. The gist of the amendment is to replace the address of service and also add a claim for 1^{1/2} months salary for the number of years worked by each Claimant as severance pay and gratuity respectively in the sum of Kshs. 128,404,705.30.
4. Both Applications are opposed and two replying affidavits sworn on 6th February, 2011 by Professor P. K. Wainaina the Deputy Vice-Chancellor (Administrative) of the Defendant.
5. The nub of the opposition to the amendment sought is that the same has the effect of introducing a new cause of action against the Respondent long after the claim got time barred, the cause of action having arisen in 2001.
6. Similarly the second Application is opposed on the basis that the 21 Applicants seek to introduce their claims in the existing cause long after their respective claims became time barred.

The Applicants rely on the provisions of the *Civil procedure Rules, 2010* as follows;

with respect to the application for amendment, reliance is placed on order 8 R 3(2) which reads;

“where an application to the Court for leave to make an amendment such as is mentioned in sub-rule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the Court may nevertheless grant such leave in the circumstances mentioned in any such sub-rule if it thinks just so to do.”

7. I think the discretion of the Court in this case is to be exercised judiciously taking into account whether or not the amendment would prejudice the other party in a manner not remediable by way of costs.
 8. The Respondent has not stated in its replying affidavit in which respect it would suffer substantial prejudice if the amendment is allowed. It would have for example indicated whether by fact of loss of documents due to the passage of time, it would be unable to fairly defend the claim.
 9. It is not for the Court to speculate on a matter that is not deposed to by the Respondent in its response to the Application. The Application is accordingly allowed. Costs to be in the cause.
10. With respect to the Application for joinder, the same is brought in terms of Order 1R1 which reads;

“All persons may be joined in one suit as Plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.”

This application coming 14 years since the cause of action arose has in my view the effect of filing new suits which are time barred.

The Court has no jurisdiction to entertain such claims brought many years after the six (6) years statutory

bar for claims based on contract has long elapsed. Were the Court to do so, it would lack jurisdiction to also provide the remedies sought well after the statutory bar.

It is now settled law that the Court has no jurisdiction to expand time with respect to claims founded on contract.

Accordingly the application for joinder by the 21 applicants is refused and costs will be in the cause.

Dated and delivered at Nairobi this 14th day March, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE