

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 209/2013

(BEFORE HON. JUSTICE HELLEN WASILWA ON 25TH JUNE, 2014)

KENYA PETROLEUM OIL WORKERS UNION CLAIMANTS

-VERSUS-

KENYA PIPELINE COMPANY LIMITED RESPONDENTS

RULING

The application in court is the one dated 4.2.2012. It is for leave to amend prayers in the memo of claim dated 24.7.2013. The application is brought through a Notice of Motion and brought under S. 3A of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Code 2010, Order 14 Rule 6 of the Industrial Court (Procedure) Rules 2010 and any other enabling Laws.

It is the applicants contention that they did not have documentary evidence to support the amended prayers at the time of filing their memo and that it is in the interest of natural justice to grant the orders sought. The applicants submitted that the respondents will not be prejudiced in any way.

The application is supported by an annexed affidavit sworn by Tom Pools Okongo Onyango.

The respondents opposed this application. It is their case that the amendment sought to be introduced will change the entire character of the case as the claimants have already commenced their case and cross-examination carried out. Further, it is respondents case that the amendments sought are mainly financial obligation of claimants to certain financial institutions and such obligations cannot be extended to an employer. Further, respondents contend that the claimant is increasing the cost of the trial which he may not cover as he is not a man of means.

Having examined submissions of both parties, the issue for determination is whether such an order as sought can be introduced in the middle of the trial.

Rule 14 (6) of the Industrial Court Procedure Rules 2010 provides that:-

“A party may, with the leave of the court amend pleadings; provided that where leave is granted, to a party to amend any pleadings, a responding party shall have a corresponding right to amend that party's pleadings.”

The provision is clear that amendment of pleadings may be granted at any time with the leave of court. The guiding principle is whether any party will be prejudiced by such an amendment. In the current case the claimant applicants seek this leave to amend their pleadings though their case has started. I do not find it prejudicial to the respondents if this prayer is granted as they will have a right to amend their defence if they so wish. I therefore allow the prayers sought by the applicants.

HELLEN WASILWA

JUDGE

25/6/2014

Appearances:-

Ombito h/b claimants present

Ajuoga h/b Khamala for respondents present

CC. Wamache