



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO. 1108 of 2011**

**MATHEW MUNYAO AND 133 OTHERS..... CLAIMANTS**

**VERSUS**

**GENERAL PLASTICS.....4<sup>TH</sup> RESPONDENT**

**RULING**

The application before me is the Claimant's Notice of Motion dated 27<sup>th</sup> May 2013. It seeks the following orders.

1. The Claimant be at liberty to amend their claim in terms of the proposed Amended Claim attached hereto.
2. The defendant be at liberty to file an amended Statement of Defence and within a period to be fixed by this Honourable court.
3. The amended Claim be deemed as filed and served on the Defendant herein.
4. The costs of this application be in the cause.

The application is supported by the Affidavit of Mathew Munyao. The application is made under Order 8 rules 3 and 5, Order 51 Rule 1 of the Civil Procedure Rules 2010 and Section 3A and 100 of the Civil Procedure Act, and all other enabling provisions of the law.

In the Supporting Affidavit sworn on 27<sup>th</sup> May 2013 Mathew Munyao depones that he is the Claimant and has brought the application on behalf of 133 other Claimants who have appointed him to represent them in the Claim, he wishes to rectify the pleadings by annexing the list of the 133 Claimants and a further authority to act from all the Claimants. He has annexed a copy of the Amended Memorandum to his Affidavit.

The Respondent has filed a Replying Affidavit of LUCAS K. KARANJA, its Human Resource Manager sworn on 11<sup>th</sup> June 2013 and filed in court on 12<sup>th</sup> June 2013. In the Affidavit he narrates the history of the case and depones that the applicant has not annexed Authority to Act, that the amendment will prejudice and cause injustice to the Respondent, that the applicant was made aware of the defects in the Memorandum of Claim through the Respondent's Preliminary Objection filed over 2 years ago and that the defect has not been cured. He prays that the application be dismissed with costs to the Respondent.

The application was heard on 9<sup>th</sup> July 2013 when Ms. Nderitu held brief for Mr. Ongegu while Ms.

Omondi held brief for Ms. Geserwa.

Ms. Nderitu in her brief submissions stated that the Claimant seeks amendment of the Memorandum of Claim in terms of the draft Amended Claim attached to the application as Appendix MMJ and that the amendment is necessary to bring to the fore all the issues between the parties.

Ms. Omondi opposed the application and relied on the Replying Affidavit of Lucas Karanja. She submitted that on 5<sup>th</sup> November 2012 the claimant who was at that time represented by Oyaro and Company Advocates had sought leave to amend the Claim but the leave was declined. She prayed that the application be dismissed.

I have considered the application, the affidavits filed by both parties and the submissions by their respective advocates. Amendment of pleadings is provided for under Rule 14(6) and (7) of the Industrial Court (Procedure) Rules 2010.

Pleadings may be amended on the request of a party or on directions of the court.

In the present application the claimant seeks to amend the claim to include the names of all the Claimants whose names have not been included in the claim as filed. The Claimant further seeks to file Authority to Act.

The Respondent has opposed the application on the grounds that a similar application Was declined on 5<sup>th</sup> November 2012 that the amendment will prejudice and cause injustice to the Respondent, that the Claimant was made aware of defects in the Memorandum of claim and that the authority to act has not been annexed to the draft Amended Claim.

I have checked the record and there is nothing on record to show that the Claimant was on 5<sup>th</sup> November 2012 denied leave to amend pleadings. The record shows that on that day the claimant sought an adjournment to enable it amend its pleadings. The adjournment was granted.

The Respondent has further submitted that the amendment will prejudice and cause injustice to the Respondent. The respondent has however not stated what prejudice or injustice it will suffer from the amendments.

The Respondent has further opposed the application on the ground that no authority to act has been annexed to the draft amended claim. Since this is only a draft, I find it premature to raise this as a ground of objection to the application to amend. This can only be a valid objection once the amended Claim is filed, if the authority will not have been filed together with the Amended Claim.

From the foregoing, I see no reason why the application should be denied and make the following orders;

1. The Claimant is hereby allowed to file the amended Memorandum of Claim within 14 days from the date of this ruling.
2. The Amended claim should include the authority to act and a breakdown of the Claims by each of the 134 claimants.
3. Each party shall bear its costs of this application.

**Read in open Court this 17<sup>th</sup> day of September 2013**

**HON. LADY JUSTICE MAUREEN ONYANGO**

**JUDGE**

**In the presence of:**

**\_\_\_\_\_ Maweu h/b for Ongegu \_\_\_\_\_ for Claimants**

**\_\_\_\_\_ Ms. Omondi h/b for Ms. Guserwa \_\_\_\_\_ for Respondent**