



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 790 OF 2013

BETWEEN

CHARLES BOB ODHIAMBO OWUONDA.....CLAIMANT

VERSUS

KENINDIA ASSURANCE COMPANY LIMITED.....RESPONDENT

Rika J

CC. Ann

Ms. Nyika holding brief for Olalo instructed by Rachier & Amollo Advocates for the Claimant

Ms. Otaba instructed by Hamilton Harrison & Matthews Advocates for the Respondent

RULING

This is a ruling on an application made by the Respondent dated 7th November 2013, seeking to amend its Statement of Response.

The application is based on the affidavit of Regina Kitheka, Chief Manager, Legal Department of the Respondent, sworn on 7th November 2013.

The Draft Amended Statement of Response marked as 'RK1', seeks to include the defence of limitation of the action, under section 90 of the Employment Act 2007.

The application was heard on 11th December 2013.

The respective parties' Advocates appear to have focused on the issue of limitation of time, which should not have been the case. The issue presently before this Court is whether amendment to the Statement of Claim should be allowed.

The Court does not see any reason why amendment should be declined. The Industrial Court Act 2011 and the Industrial Court (Procedure) Rules 2010 under which the application is made, grant the Court discretion in determining applications to amend pleadings. Secondly, the issue sought to be included in the Statement of Response, is an issue the Court could raise on its own motion, and goes to the heart of the validity of the Claim. Thirdly, the Claimant has the opportunity to file his own Amendments, and answer to the issue raised by the Respondent in its proposed Amendments.

For these reasons:-

- a. *The application dated 7th November 2013 is allowed.*
- b. *The Draft Amended Statement of Response attached to the Application shall be deemed as properly filed and served upon the Respondent's payment of the requisite Court filing fees.*
- c. *The Claimant shall have leave of 14 days to file and serve an Amended Statement of Claim upon notice from the Respondent of its compliance to order (b).*
- d. *Parties may schedule the dispute for hearing at the Registry on closure of the pleadings.*

Dated and delivered at Nairobi this 17th day of December 2013

James Rika

Judge