



REPUBLIC OF KENYA

IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI

TRIBUNAL CASE NO. 4 of 2019

MARGARET WAIRIMU GACHERU.....CLAIMANT

VERSUS

BOOTS SACCO LTD.....RESPONDENT

RULING

The matter for determination is a Notice of Motion application dated 7/8/2019 seeking for leave to amend the statement of defence and costs be provided for. The same is opposed by the replying affidavit filed on 19/8/2019. The applicant with the leave of the tribunal filed a supplementary affidavit on 30/8/2019 and the respondent filed a further affidavit on 5/9/2019. Parties filed their written submission to dispense the said application. The Applicant submitted that there was need to amend the defence premised by the fact that the claimant was a member of the Applicant Supervisory Committee when there was misappropriation of the applicants member funds and she failed in her duty of care. Hence the need to amend the defence and prays for the amendment of the application be allowed.

The claimant submitted that the Respondent/ Applicant has not denied owing the claimant hence the application to amend the defence is only meant to harass, embarrass and settle scores.

That the said intended amendment does not introduce any matters, both facts or law different from that in the pleadings and subsequent averments in the affidavit filed.

That there is no annexures between the claimant's claim and any other actions the respondent wishes to introduce. That the said intended amendment does not add any new material and it is a waste of time.

We have considered the submissions of the parties and noted the intended amendments by the applicants. We note the intended amendments have introduced issues which may be relevant to the statement of claim and which may be canvassed during the hearing of the matter owing to the fact the statement of claim does not only seek a refund of the share but also seeks the following prayers:-

(a) Paragraph 9(b) compensation in the nature of punitive and general damages.

(b) Paragraph 9(c) compensation for loss of benefits of the refunds since June, 2014.

The issues raised in the intended amendments may come up during the hearing of the statement of claim and also raises triable issues interms of the defence.

We therefore allow the application dated 7/8/2019 and order as follows;-

(1) The applicant is hereby granted leave to amend the statement of defence and the intended amended statement of defence filed on 8/8/2019 be deemed as duly filed and served subject to payment of filing fees.

(2) The claimant is granted corresponding leave to file and serve the reply to the amended statement of defence within 14 days herein.

(3) Costs in the cause.

Read and delivered in open court, this **7th** of **November** 2019

In the presence of:

Claimant: Karanja advocate for the claimant.

Respondent: Mbuthia for Respondent/Applicant.

Court Assistant: Leweri and Buluma.

B.Kimemia - **Chairman-signed.**

R.Mwambura - **Member-signed.**

P.Swanya - **Member-signed.**



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