



**In re Estate of Pius Chege Kiguru (Deceased) (Succession Cause  
16 of 2019) [2024] KEHC 10518 (KLR) (28 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10518 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
SUCCESSION CAUSE 16 OF 2019**

**A MSHILA, J**

**AUGUST 28, 2024**

**IN THE MATTER OF THE ESTATE OF PIUS CHEGE KIGURU (DECEASED)**

**BETWEEN**

**JOSEPH MUNGAI KARORI ..... APPLICANT**

**AND**

**MONICA WANJIRU CHEGE ..... RESPONDENT**

**RULING**

**Introduction**

1. The Applicant filed a Notice of Motion Application dated 17<sup>th</sup> May 2024 under Order 8 Rules 3(3) and (5), and Order 51 Rule 1 of the [Civil Procedure Rules](#), Section 1A, 1B and 3A and of the [Civil Procedure Act](#) and all enabling provisions of the law. The Applicant sought the following orders;
  - a. The Court be pleased to grant the Applicant leave to amend the application dated 29<sup>th</sup> March, 2024 as shown on the amended application filed herewith.
  - b. The Court to grant the Applicant 14 days to file the amended application.
  - c. The amended application be deemed as duly filed upon payment of the requisite fees.
2. The Application was supported by the grounds on the face of it and by the sworn Affidavit of Colin Warutere Munene who stated that it is necessary to amend the application dated 29<sup>th</sup> March, 2024 to correctly reflect the name of the Respondent/Administrator who is now deceased and a new administrator was appointed on the 7<sup>th</sup> May, 2024; This information of the demise of the administrator came to the knowledge of the deponent after he had already filed the application;
3. Leave to amend the original application is necessary as it is tainted with an inadvertent defect which needs to be corrected for clarity purposes. The present application has been filed on bonafide grounds



and no prejudice will be caused to the Respondents' rights if the application is allowed. Further, the Application has been made without any delay since the discovery of the demise of the administrator. The Applicant also stated that if this application is not allowed there will be substantial loss and hardship that will be occasioned to the estate of the deceased.

4. The Applicant made oral submissions and the application was not challenged by the Respondents.

#### **Issues for Determination**

5. Having considered the Application, response and the written submissions by the respective parties; the following issues are for determination;
  - i. Whether the Applicant should be granted leave to amend the application.

#### **Analysis**

6. The applicable law is found at Section 100 of the *Civil Procedure Act* which permits the Court to allow amendments of pleadings at any time during the proceedings for the purposes of determining the real questions in dispute. Refer to the case of *Bosire Ogero v Royal Media Services* [2015] eKLR.
7. The provisions of Order 8 Rule 3 and 5 of the *Civil Procedure Rules*, 2010 are also applicable and the Court may at any stage, on such terms as to costs or otherwise as may be just, allow any party to amend its pleadings notwithstanding that such an application is made after the expiry of a period of limitation upon which the other party might be entitled to rely or substitute a party or alter the capacity in which a party sues or even add or substitute a new cause of action.
8. In the case of *St Patrick's Hill School Ltd v Bank of Africa Kenya Ltd* [2018] eKLR the Court of Appeal set out the principles governing the amendment of pleadings as follows: -
  - a. The power of the court to allow amendments is intended to determine the true substantive merits of the case.
  - b. The amendments should be timeously applied for.
  - c. Power to amend can be exercised by the court at any stage of the proceedings.
  - d. That as a general rule however late the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side.
  - e) The plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on the Limitations Act subject however to powers of the court to still allow and amendment notwithstanding the expiry of current period of limitation.
9. In *Harrison C. Kariuki v Blueshield Insurance Company Ltd* [2006] eKLR the court referred to the Court of Appeal decision in *Central Kenya Ltd v Trust Bank Ltd* [2000] EALR 365 and held that: -

“The guiding principle in applications to amend pleadings is that the same will be liberally and freely permitted, unless prejudice and injustice will be occasioned to the opposite party. There will normally be no justice if the other party can be compensated by an appropriate award of costs for any expense, delay or bother occasioned to him. The main issue is that it be in the interests of justice that the amendments sought be permitted in order that the real question in controversy between the parties be determined.”



10. Leave to amend pleading is at the discretion of the court which must not apply this discretion arbitrarily as was echoed in the case of *Kassam v Bank of Baroda (Kenya) Ltd* [2002] eKLR. The general principle while granting leave for amendment is that it should be allowed provided that it is not done in bad faith and it does not occasion injustice to the other party.
11. It is the Court's view that the Applicant has not proposed to amend the Prayers in the original application dated 29/03/2023 and that the amendment seeks to bring in the new administrator as a party to the cause.
12. Another principle is that an amendment should not be allowed if it causes injustice to the other side. It is the Court's opinion that by allowing the amendment there will be no injustice if the Respondents can be compensated by costs.
13. This court is satisfied that the said proposed amendment is necessary for the determination of the real issues in dispute in this Cause; the proposed amendment does not introduce a new cause of action or change the character of the case but arise from the same set of facts as those set out in the original application necessary to provide clarity of the parties involved that will enable the Court to conclusively determine all issues between the parties to the suit.

### **Findings and Determination**

14. For the forgoing reasons this court makes the following findings and determinations;
  - i. This court finds that the application has merit and it is hereby allowed;
  - ii. The Applicant is hereby granted leave to amend and serve the Amended application within fourteen (14) days upon payment of the requisite fees. The Respondents are at liberty to file an amended Response within fourteen (14) days after service.
  - iii. The Applicant to bear the costs of this application.
  - iv. Mention on 27/11/2024 to fix a hearing date for the application.
  - v. Mention Notice to Respondent.

Orders Accordingly.

**DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 28<sup>TH</sup> DAY OF AUGUST, 2024.**

**A. MSHILA**

**JUDGE**

