



**Anaheim Investments Limited t/a Soho's Bar and Restaurant v  
Gurbaksh Singh (K) Limited & another (Commercial Case 934 of 2021)  
[2024] KEHC 10276 (KLR) (Commercial and Tax) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10276 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE 934 OF 2021  
PM MULWA, J  
AUGUST 15, 2024**

**BETWEEN**

**ANAHEIM INVESTMENTS LIMITED T/A SOHO'S BAR AND  
RESTAURANT ..... APPLICANT**

**AND**

**GURBAKSH SINGH (K) LIMITED ..... 1<sup>ST</sup> RESPONDENT  
DENNIS K MWANGI T/A KENYA SHIELD AUCTIONEERS .... 2<sup>ND</sup>  
RESPONDENT**

**RULING**

1. The plaintiff filed the Notice of Motion dated 22<sup>nd</sup> January 2024 seeking leave of the court to amend the plaint dated and filed on 29<sup>th</sup> November 2021 in the manner set out in the draft Amended Plaint. Further, that the court grants the plaintiff leave to file such supplementary documents as are necessary to support the intended Amended Plaint.
2. Subsequently, the intended Amended Plaint and any supplementary documents be deemed as duly filed in this Court upon payment of the requisite court filing fees.
3. The application was supported by the sworn affidavit of Ravinder S. Jhite who stated that the plaintiff has obtained a Forensic Document Examiner's Report on the Lease Agreement the subject of the suit herein which shows that the said Lease Agreement is a forgery.
4. The facts and particulars of the Forensic Document Examiner's Report are relevant to the Plaintiff's suit herein and will assist the Court in reaching a just and fair determination on the real questions in



controversy between the plaintiff and the defendants/respondents, as the plaintiff intends to rely on the said report.

5. The defendant responded vide the Replying Affidavit dated 1<sup>st</sup> February 2024 and stated that the proposed amendments will not aid the court in any manner whatsoever as the forensic report sought to be adduced, was part of the complaint by the plaintiff to the police and had been dismissed by the Director of Public Prosecutions.
6. Further that, the plaintiff is not deserving of the orders sought as it has always been aware of these developments and the filing of the application is nothing but an attempt at scuttling the hearing of this matter. Thus, the application lacks merit and is an abuse of the court process and ought to be dismissed.
7. The application was dispensed with by way of written submissions which the court has carefully considered alongside the application and the response therewith. The only issue for determination is whether leave should be granted to the plaintiff to amend the plaint.
8. The provision that governs amendment of pleadings is provided under Section 100 of the Civil Procedure Act which states that:

“The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”
9. Further to the above, Order 8 rule 3 of the Civil Procedure Rules, provides the procedural provisions as hereunder:
  - (1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.
  - (2) Where an application to the court for leave to make an amendment such as is mentioned in sub-rule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such sub-rule if it thinks just so to do.
  - (3) ...
  - (4) ...
  - (5) An amendment may be allowed under sub-rule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.”
10. The import of the above provisions is that an amendment may be allowed at any time of the suit. This however is discretionary and therefore the parties need to seek leave as has been done by the applicant herein.



11. The factors to be taken into consideration while considering an application for amendment of pleadings were well enunciated in the case of *Harrison C. Kamau vs Blue Shield Insurance Co. Ltd* (2006) eKLR, where the court stated that:

“...the amendments of pleadings...(is) aimed at allowing a litigant to plead the whole of the claim he (is) entitled to make in respect of his cause of action. A party would be allowed to make such amendments of pleadings as (are) necessary for determining the real issue in controversy or avoiding a multiplicity of suits, provided:

  - (i) There has been no undue delay;
  - (ii) No new inconsistent cause of action (is) introduced;
  - (iii) No vested interest or accrued legal right (is) affected; and
  - (iv) The amendment (can) be allowed without injustice to the other side...”
12. Has there been undue delay? In support of its application, the plaintiff argued that it filed the application herein immediately it became aware of the existence of the Forensic Document Examiner’s Report on or about December 2023. This was after the DPP’s letter dated 23<sup>rd</sup> October 2023 declining prosecution of the plaintiff’s complaint of forgery on the said lease. In addition, the forensic document examiner’s report that the plaintiff is relying on is dated 29<sup>th</sup> June 2022. It goes without saying that there has been an inordinate delay in filing this application.
13. Do the amendments give rise to a new cause of action? It was the plaintiff’s submission that it is not seeking to introduce new or inconsistent cause of action or issues. The lease is the substratum of the suit, and its particulars had been pleaded in the original plaint. To the contrary, the defendant argued that from the plaint dated 29<sup>th</sup> November 2021, it is clear that the issue of the legitimacy or lack thereof of the lease is not in question. Therefore, since the amendment is intended only to claim that the lease is a forgery, it does not address the true substantive merits of the plaintiff’s case.
14. For the court to allow an amendment, it has to first look into the intent and purpose of the amendment and whether any prejudice will be suffered by the other party or parties in dispute and whether prejudice can be compensated by way of costs. Will the amendments cause an injustice to the respondent? The respondent argued the proposed amendment is an afterthought by the plaintiff. This is because the application intends to introduce ‘The Forensic Report’ which purports the lease in question is a forgery and yet the plaintiff has relied on the same lease in various matters before this court such as in HCCC No. E285 of 2019, HCCC No. E658 of 2021 and an arbitration before Phyllis Wangwe Arbitrator.
15. It is the court’s view that in the original plaint the claim is for unlawful termination of the tenancy between the plaintiff and the 1<sup>st</sup> defendant. It is also worthy to note that at Para. 4 of the original plaint it is admitted by the plaintiff that it was a tenant in the 1<sup>st</sup> defendant’s premises even as it now seeks to argue that the lease in question lacks legitimacy. The amendment sought by the plaintiff does not address the main issue before the court which is the unlawful termination of the existing tenancy between the plaintiff and the 1<sup>st</sup> defendant.
16. It is clear that the existence of ‘The Forensic Report’ was well within the knowledge of the plaintiff as is evident from the DPP’s said letter dated 23<sup>rd</sup> October 2023 as well as the Forensic Report itself which is dated 29<sup>th</sup> June 2022. The plaintiff did not take any action upon the discovery of the said forensic report yet the same lease was relied on in various matters before this court such as hereinabove listed.



17. In light of the above, the Court exercises its discretion and disallows the application for amendment of the plaint. As a consequence, the application dated 22<sup>nd</sup> January 2024 is dismissed. Costs will abide the outcome of the main suit.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF AUGUST 2024.**

.....

**P. MULWA**

**JUDGE**

In the presence of:

Mr. Malonza for Plaintiff

Mr. Munene for Defendant

Court Assistant: Lilian

