



REPUBLIC OF KENYA



**Mumias Sugar Company Ltd v Dubai Bank Kenya Limited (Civil Case 294 of 2014)
[2022] KEHC 117 (KLR) (Commercial and Tax) (18 February 2022) (Ruling)**

Neutral citation: [2022] KEHC 117 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 294 OF 2014
A MABEYA, J
FEBRUARY 18, 2022**

BETWEEN

MUMIAS SUGAR COMPANY LTD PLAINTIFF

AND

DUBAI BANK KENYA LIMITED DEFENDANT

RULING

1. The ruling relates to a Notice of Motion dated 5/9/2019 brought under Sections 1A, 3A and 100 of the *Civil Procedure Act*, Cap 21 Laws of Kenya, Order 8 rule 3(2) and (3) and Order 51 rule 1 of the Civil Procedure Rules, 2010.
2. The Defendant is seeking leave to amend the Statement of Defence and Counterclaim dated 24/10/2014 to change its name from Dubai Bank Kenya Limited to Dubai Bank Kenya Limited (In Liquidation). The Defendant also prays that the draft Amended Statement of Defence and Counter Claim be deemed to be duly filed upon payment of the requisite fees.
3. The application is supported by the Affidavit of Peter Kitonyo, the Assistant Liquidation Agent of Dubai Bank Kenya Limited (In Liquidation). He averred that the Defendant bank was placed under receivership during the subsistence of this suit and is now referred to as Dubai Bank Kenya Ltd (In liquidation). He stated that it is only prudent that the current identity and status of the Defendant is clearly reflected in the pleadings. Lastly, it was his view that the Plaintiff will not be prejudiced by the same.
4. The Plaintiff did not oppose the application.
5. The only issue for determination herein is whether the Defendant has satisfied the criteria for grant of the orders sought.



6. The statutory basis for amendment of pleadings begins with section 100 of the *Civil Procedure Act* Cap 21 laws of Kenya which provides as follows: -

“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”.

7. The above provision is supported by Order 8 of the *Civil Procedure Rules 2010*. In instances where pleadings have closed such as the present case, the Rules require leave of court before amending pleadings. The Order provides: -

“(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) An amendment to correct the name of a party may be allowed under sub-rule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.

(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under sub-rule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued.

(5) ...”

8. From the foregoing, it is clear that the court has discretion to allow amendment of pleadings at any stage of the proceedings. Such amendments ought to be freely allowed provided that they do not prejudice or cause injustice to the other side which cannot be compensated in costs. See *Eastern Bakery v Castelino (1958) EA 461* and *Central Kenya Ltd v Trust Bank Ltd & 5 others [2000] eKLR*.

9. In the instant case, the Defendant has not annexed its proposed amended Statement of Defence and Counterclaim. However, it is clear that the only particulars sought to be introduced by the Defendant is a change of its name from Dubai Bank Kenya Limited to Dubai Bank Kenya Limited (In Liquidation). Indeed, it is public knowledge that the Defendant was placed under receivership and no longer operates in the capacity it was when the Statement of Defence and Counterclaim was filed.

10. Order 8 Rule 3(3), permits an amendment to correct the name of a party if the court is satisfied that the parameters thereunder are met. In the present case, I find no bad faith on the part of the Defendant as the amendment is merely being sought to reflect its current status. There is also no reasonable doubt as to the identity of the party that is suing or being sued. I therefore have no doubt that the Plaintiff will not be prejudiced by the proposed amendments.



11. In the premises, the application dated dated 5/9/2019 is merited and is hereby allowed as follows: -

- a. The Defendant is granted leave to amend its Statement of Defence and Counterclaim.
- b. The amended Statement of Defence and Counterclaim to be filed and served within 14 days from the date of this ruling.
- c. The Plaintiff has corresponding leave to file and serve a Reply and Defence to Counterclaim, if necessary within 14 days of service.
- d. There shall be no order as to costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF FEBRUARY, 2022.

A. MABEYA, FCIArb

JUDGE

