



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

(PETITION NO. E016 OF 2021

(Consolidated with Petition Nos. E022 of 2021, M011 of 2021, M009 of 2021 and 334 of 2020

BETWEEN

KENYA TEA GROWERS ASSOCIATION & OTHERS.....PETITIONERS

AND

THE HON. ATTORNEY GENERAL & OTHERS.....RESPONDENTS

AND

KENYA SMALL TEA HOLDERS GROWERS

ASSOCIATION (KESTEGA) & OTHERS.....INTERESTED PARTIES

RULING NO. 2

1. This ruling relates to the application by way of a Notice of Motion dated 17th February, 2022.
2. The application was filed by Messrs. Kaplan & Stratton Advocates on behalf of Kenya Tea Growers Association, the 1st Petitioner in the consolidated Petitions.
3. The following prayers were sought for in the application: -
 1. *THAT this Court be pleased to grant leave to the Petitioner to amend its Petition dated 12th January, 2021 in terms of the annexed draft Amended Petition.*
 2. *That this the costs of this application be in cause.*
4. The application is supported by the affidavit of one *Apollo Kiarri* sworn on 17th February, 2022. It is also premised on the grounds appearing on the body of the application.
5. In further support to the application, the 1st Petitioner/Applicant filed written submissions and a List and Bundle of Authorities evenly dated 4th March, 2022.
6. The application is opposed by three parties. They are the Hon. Attorney General, the Cabinet Secretary Ministry of Agriculture and the Agricultural, Fisheries and Food Authority.
7. The Hon. Attorney General and the Cabinet Secretary Ministry of Agriculture filed joint Grounds of opposition and written submissions both dated 7th March, 2022
8. The Agricultural, Fisheries and Food Authority filed Grounds of opposition, a List and Bundle of Authorities and written submissions

all dated 23rd March, 2022.

9. Given the nature of the application, we do not find it necessary to reproduce the parties' cases *verbatim* in this ruling. However, we must acknowledge the on-point submissions filed by all the parties both in support and in opposition to the application. That makes our work in this ruling relatively light.

10. There is basically one issue for determination in this ruling. It is whether this Court ought to grant leave to the Applicant to amend its Petition.

11. We will briefly look at the law and settled judicial precedents on the subject of amendment of pleadings.

12. As the dispute has been presented before Court as a Constitutional Petition, the starting point can only be the *Constitution* and the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* (commonly referred to as '**the Mutunga Rules**').

13. The Constitution does not provide for the amendment of Petitions. However, the Mutunga Rules makes such provision.

14. Rule 18 of the Mutunga Rules provides as follows: -

A party that wishes to amend its pleadings at any stage of the proceedings may do so with the leave of the Court.

15. Indeed, the amendment must be sanctioned by the Court. In doing so, the Court ought to exercise its discretion judiciously.

16. *Courts have over time dealt with the subject in issue. The parties have already referred to various outstanding decisions on the subject. We will just make reference to two of them.*

17. *The Court of Appeal in Ochieng & Others v First National Bank of Chicago Civil Appeal No. 147 of 1991* (unreported) while citing with approval the decision in *St Patrick's Hill School Ltd v Bank of Africa Kenya Ltd* [2018] eKLR, 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 Limitations Act subject however to powers of the court to still allow and amendment notwithstanding the expiry of current period of limitation.*

18. In *Harrison C. Kariuki v Blueshield Insurance Company Ltd* [2006] eKLR the Court referred to the Court of Appeal 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 injustice if the other party can be compensated by an appropriate award of costs for any expense The main aim 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.

19. In its disposition, the Applicant averred that the intended amendments were aimed at including better and further particulars to the Petition in respect to the breaches of its constitutional rights; the Respondents' contravention of various statutory provisions as well as to further highlight the substantial negative impact the implementation of some sections of the Tea Act will have on the Applicant.

20. It was further averred that the amendments would foster fair and just determination of the suit and that no party shall stand prejudiced.

21. The Respondents who filed objections to the application posited that the amendments were aimed at introducing new issues, were quite late in the day, would delay the early determination of the matter, that the Respondents stand to be prejudiced and that the Applicant did not offer to pay costs.

22. As is settled in law, the primary consideration by a Court in applications for amendment is to accord a party the opportunity to fully present its case for the Court's consideration. That is the rationale behind the generally acceptable position that amendments ought to be freely allowed unless otherwise demonstrated. We must add that there is considerable wisdom in dealing with all related issues in a single matter. The approach saves on the limited judicial time and takes care of the possibility of parties filing other related or similar suits. Courts are also called upon under Article 159(2) (d) of the Constitution to deal with the substance of the matters in place of procedural considerations.

23. Having said so, we will now consider the nature of the amendments. We have carefully perused the draft amended Petition annexed to the application. We agree with the Applicant that the amendments do not introduce any new issues. The amendments intend to introduce further and brief particulars in respect of matters which were already pleaded in the original Petition. We, therefore, do not see how the Respondents will be prejudiced.

24. On the issue of the amendments likely to delay the finalization of the consolidated Petitions, we take the position that since the Petitions are not yet fixed for hearing, this Court shall fast-track its hearing such that no much time will be spent as a result of allowing the amendments.

25. We have by now said enough to demonstrate that the application is merited.

26. Consequently, the following final orders do hereby issue: -

(a) The Applicant, be and is hereby, granted leave to amend the Petition. The amended Petition shall be filed and served within 5 days of this order.

(b) The Respondents and Interested Parties shall file and serve any further or amended responses to the Amended Petition, as the case may be, within 7 days of service.

(c) The Petitioners in the consolidated Petitions shall thereafter file and serve supplementary responses, if any, together with written submissions to the consolidated Petitions within 14 days of service.

(d) Upon service, the Respondents and the Interested Parties will be at liberty to file and serve written submissions within 14 days.

(e) Costs of the Notice of Motion dated 17th February, 2022 shall be in cause.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF MARCH, 2022

H. I. ONG'UDI

JUDGE

A. C. MRIMA

JUDGE

J. NYAGAH

JUDGE