



**Rising Freight Limited & another v Kenya National Highways Authority & 3 others
(Environment & Land Case 331 of 2017) [2023] KEELC 18437 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 18437 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 331 OF 2017**

JO MBOYA, J

MAY 25, 2023

BETWEEN

RISING FREIGHT LIMITED 1ST PLAINTIFF

COMPUTECH LIMITED 2ND PLAINTIFF

AND

KENYA NATIONAL HIGHWAYS AUTHORITY 1ST DEFENDANT

THE REGISTRAR OF TITLES 2ND DEFENDANT

NATIONAL LAND COMMISSION 3RD DEFENDANT

THE HON ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. On or about the 5th July 2022, the Plaintiffs/Respondents herein sought for and obtained Leave to file Further amended Plaintiff in respect of the subject matter. In this respect, the Plaintiff thereafter proceeded to and indeed filed a Further amended Plaintiff dated the 12th July 2022.
2. Nevertheless, despite having filed the said Further amended Plaintiff dated the 12th July 2022, it transpired that the Further amended Plaintiff was neither amended in compliance with and in accordance to the provisions of Order 8 Rule 7(2) and (3) of the Civil Procedure Rules, 2010. In this respect, the Plaintiff thereafter sought for and obtained leave to withdraw the impugned Further amended Plaintiff, with a view to filing a complaint Further amended Plaintiff.
3. Moving forward, it is common ground that the Plaintiffs/Applicants herein proceeded to and indeed filed a Further amended Plaintiff dated the 29th September 2022; and which further amended Plaintiff is now the subject of the Application beforehand.



4. For good measure, the Application dated the 14th November 2022, seeks for the following reliefs;
 - i. The Further amended Plaintiff dated the 29th September 2022; be struck out.
 - ii. Costs be provided for.
5. Instructively, the instant Application is premised and anchored on the various albeit numerous grounds, totaling 15 in number, which have been enumerated at the foot of the Application. Further, the Application is supported by the affidavit sworn by Milcah Muendo and in respect of which same has annexed two documents thereto.
6. Upon being served with the subject Application, the Plaintiffs/Respondents herein filed Grounds of opposition dated the 23rd November 2022 and in respect of which the Plaintiffs/Respondents have contended, inter-alia, that the subject Application amounts to trifling with the Due process of the court and constitutes an attempt to elevate procedural technicality to supersede substantive Justice.
7. Be that as it may, when the Application came up for hearing on the 7th March 2023, the advocates for the Parties agreed to canvass and ventilate the Application by way of written submissions. Invariably, the advocates for the Parties thereafter proceeded to and indeed filed their respective submissions.

Submissions By The Parties:

a. Applicant's Submissions:

8. The Applicant herein filed written submissions dated the 18th April 2023 and in respect of which same has raised, highlighted and canvassed two (2) pertinent issues for consideration by the Honourable court.
9. Firstly, Learned counsel for the Applicant has submitted that even though the Plaintiff/Respondent sought for and obtained leave to file and serve a Further amended Plaintiff, what was ultimately filed and served, to wit, the Further amended Plaintiff dated the 29th September 2022; does not comply with the provisions of Order 8 Rules 7(2) and (3) of The Civil Procedure Rules 2010.
10. In addition, Learned counsel has contended that vide the further amended Plaintiff, the Plaintiffs/Respondents herein have completely substituted the various paragraphs, which were hitherto obtaining at the foot of the amended Plaintiff and thereafter replaced the original paragraphs with completely new paragraphs, which are at variance with the previous paragraphs.
11. To illustrate her submissions, the Applicant has contended that what the Plaintiff/Respondent has done is to remove and eliminate completely paragraphs 7 to 18 of the Amended Plaintiff and to insert new paragraphs with different contents. Furthermore, Learned counsel has contended that thereafter what was hitherto paragraph 7 to 18 of the amended Plaintiff have now been extrapolated and placed as paragraphs 19 to 30 of the Further amended Plaintiff.
12. On the other hand, Learned counsel for the Applicant has submitted that what ought to have been done was for the Plaintiffs/Respondents to leave the original paragraph 7 to 18 of the amended Plaintiff in situ and thereafter to add the additional paragraphs, if any, taking into account the existing paragraphs. In this regard, the Plaintiffs/Respondents would then be called upon to cancel in red or such other permissible color, what is being amended, whilst underlining the new insertions in the permissive colors.



13. As a result of the foregoing, Learned counsel for the Applicant has thus submitted that the manner in which the Further amended Plaintiff has been prepared and or crafted does not accord with the Rules of Procedure and thus same constitutes a complete muddle.
14. Further and in any event, Learned counsel for the Applicant has submitted that as a result of the confused paragraphing, arising out of the Further amended Plaintiff, it has become difficult, nay, impossible for the 1st Defendant/Applicant to appropriately file a further amended Defense and formulate her defense in such a manner to be able to defend the Interests of the 1st Defendant/Applicant.
15. In the premises, Learned counsel for the Applicant has therefore contended that the infringement of the Rules of procedure as pertains to amendment of pleadings, renders the entire Further amended Plaintiff invalid and ought to be struck out.
16. In support of the foregoing submissions, Learned counsel for the Applicant has cited and relied on various decisions, inter-alia, Cooperative Insurance Company Ltd v PAEM Agencies Company Ltd (2014)eKLR and Peter G N Ng'ang'a & Another v Kenya Finance Bank Ltd (in liquidation) (2014)eKLR.
17. Secondly, Learned counsel for the Applicant has submitted that the Plaintiff/Respondents herein cannot be allowed to alter and/or substantially change the character of the suit before the court, albeit in the name of an amendment. For clarity, Learned counsel has contended that the further amended plaintiff, which is sought to be struck out and/or expunged from the proceedings, has altered and changed the character of the suit that was hitherto filed and mounted by the Plaintiffs/Respondents.
18. In this respect, Learned counsel for the Applicant has therefore contended that the court ought to strike out the Further amended Plaintiff, similarly on account that same has altered the character of the suit which was mounted before the Honourable court at the onset.
19. In support of the foregoing submissions, Learned counsel for the Applicant has invited the court to take note of the holdings in the case of Jacob Ngigi Mwiruri v Mbote Stores (2017)eKLR, where the court in the course of its pronouncement underscored that a Party cannot alter and/or substitute the cause of action albeit in the name of amendment.
20. In a nutshell, Learned counsel for the Applicant has therefore implored the court to find and hold that the impugned Further amended Plaintiff infringes upon and violates the Provisions of Order 8 Rules 7(2) and (3) of The Civil Procedure Rules 2010 and thus deserves to be struck out.

b. Respondents' Submissions:

21. The Respondent herein filed written submissions dated the 2nd May 2023; and in respect of which same have similarly raised, highlighted and canvassed two salient issues for consideration by the Honourable Court.
22. First and foremost, Learned counsel for the Respondents has submitted that the Further amended Plaintiff dated the 29th September 2022 and which is the subject of the current Application, duly complied with the provisions of Order 8 Rules 7(2) and (3) of the Civil Procedure Rules, 2010.
23. In particular, Learned counsel has submitted that the named provisions of the Civil Procedure Rules 2010, merely stipulates that where an amendment is being carried out and or undertaken the words and/or paragraphs which are sought to amended shall be crossed using the appropriate ink, whilst on the other hand underlining the insertion using the appropriate ink, as well.



24. Additionally, Learned counsel for the Respondent has submitted that the named provisions of the Civil Procedure Rules do not state and stipulate the manner in which the amended or Further amended paragraphs as supposed to be reflected/enumerated in the body of the amended pleadings. In this regard, Learned counsel has posited that it is therefore permissible for one to remove completely or otherwise eliminate the paragraphs which were hitherto obtaining in the previous pleading and substitutes same with new paragraphs, which are being inserted on the basis of (sic) the amendment or Further amendments.
25. Consequently, it is the submissions of Learned counsel that it was permissible for the Respondent to eliminate completely paragraph 7 to 18 of the amended Plaintiff and to replace same with new paragraphs of the Further amended Plaintiff, without leaving trace of the previous/original paragraphs.
26. On the other hand, Learned counsel has also contended that it was permissible for what were hitherto previous paragraphs 7 to 18 of the amended Plaintiff, which have been replaced by new paragraphs of the Further amended Plaintiff, to be extrapolated and be constituted as extremely new paragraphs 19 to 30 of the Further amended Plaintiff.
27. In any event, Learned counsel has submitted that the issue of how the paragraphs are contained and reflected in the Further amended Plaintiff is trivial and simplistic and thus same cannot found the basis of an Application to strike out the Further amended Plaintiff, either in the manner sought by the Applicant or at all.
28. To buttress the foregoing submissions, Learned counsel for the Respondent has cited and relied on, inter-alia, the case of Salama Beach Hotel Ltd & 2 Others versus Kenyariri & Associates Advocates (2016)eKLR, Karino Olekoriata versus Stephen Kaitet Koriata & 2 Others (2020)eKLR and Phebe Wangui (Formerly known as Phebe Wangui Kamore) versus James Kamore Njomo Nairobi HCC No. 367 of 2010 (Unreported).
29. Secondly, Learned counsel for the Respondent has submitted that even if the Honourable court were to find and hold that the Further amended Plaintiff dated the 29th September 2022; was improperly amended and thus invalid, the striking out of the further amended plaintiff should not translate into the striking out of the entire suit, in the manner contended by the Applicant herein.
30. Instructively, Learned counsel for the Respondent has submitted that if the Further amended Plaintiff is struck out and/or expunged then the previous Amended Plaintiff, to wit the amended Plaintiff, which was sought to be re-amended, shall stand restored and/or reinstated and consequently, the proceedings can very well be taken and continued with on the basis of the previous amended Plaintiff.
31. In support of the foregoing submissions, Learned counsel for the Respondent has cited and relied on the case of Gerald Iha Thoya versus Chiriba Daniel Chai & Another (2018)eKLR.
32. In view of the foregoing, Learned counsel for the Respondent has therefore submitted that the complaints by and/or at the instance of the Applicant herein are so trivial and ought not to be relied upon to drive away the Plaintiffs/Respondents from the seat of Justice.



Issues For Determination

33. Having reviewed the Notice of Motion Application dated the 14th November 2022; the affidavit in support thereof and the Grounds of opposition filed on behalf of the Respondent; I come to the conclusion that the following issues are pertinent and thus worthy of determination;
- i. Whether the Further amended Plaintiff dated the 29th September 2022 has been amended in accordance with and in compliance to the provisions of Order 8 Rules 7(2) and (3) of The Civil Procedure Rules, 2010.
 - ii. Whether the Further amended Plaintiff ought to be struck out on account of the infringements complained of or otherwise.

Analysis And Determination

Issue Number 1

Whether the Further amended Plaintiff dated the 29th September 2022 has been amended in accordance with and in compliance to the provisions of Order 8 Rules 7(2) and (3) of The Civil Procedure Rules, 2010, otherwise.

34. It is common ground that the Plaintiffs/Respondents herein, indeed sought for and obtained Leave to file and serve a Further amended Plaintiff, pertaining to and in respect of the instant matter.
35. Further and in addition, it is also not lost on the court that pursuant to the Leave which was granted on the 5th July 2022, the Plaintiffs/Respondents herein proceeded to and indeed filed a Further amended Plaintiff dated the 12th July 2022. However, on the 27th September 2022, the Plaintiffs/Respondents realized and indeed conceded that (sic) the Further amended Plaintiff which was filed was in breach of the mandatory rules of the Civil Procedure.
36. Arising from the foregoing, the Learned counsel for the Plaintiffs/Respondents proceeded to and sought permission of the court to withdraw the impugned Further amended Plaintiff and thereafter to file a compliant Further amended Plaintiff. For good measure, the Honourable court indeed granted the liberty/permission to the Plaintiffs/Respondents to withdraw the Further amended Plaintiff dated the 12th July 2022.
37. Moreover, the Plaintiffs/Respondents herein thereafter proceeded to and indeed crafted/drafted a Further amended Plaintiff dated the 29th September 2022 and which was thereafter filed/lodged before the court.
38. It is the current Further amended Plaintiff, which has provoked the Application to strike out same. For clarity, the Applicants contends that the manner in which the further amendments have been done is such that the paragraphs which were hitherto contained in the amended Plaintiff have been uprooted and completely removed, without trace; and thereafter replaced by completely new paragraphs.
39. On the other hand, it has also been pointed out that thereafter the paragraphs which were hitherto obtaining in the amended Plaintiff have been removed and taken elsewhere in the body of the Further amended Plaintiff, so much so that the body of the Further amended Plaintiff is completely incoherent and distorted.
40. Instructively, I have perused the Further amended Plaintiff which has been filed by and on behalf of the Plaintiffs/Respondents and I must point out that indeed the Learned counsel for the Plaintiffs/Respondents has completely removed what was hitherto paragraphs 7 of the amended Plaintiff and



thereafter replaced same completely with new paragraphs, in such a manner that one is not able to discern what was hitherto the paragraphs appearing in the amended Plaintiff.

41. Furthermore, after removing and completely eliminating various paragraphs which were in the amended Plaintiff and substituting same with new insertions/replacements, Learned counsel for the Respondents has thereafter extrapolated the initial paragraphs from the amended Plaintiff to a completely different segment of the Further amended Plaintiff. In this regard, the Further amended Plaintiff has been completely re-orientated.
42. In my humble view, the Learned counsel for the Respondents ought and was called upon to ensure that the original paragraphs, which were contained in the amended Plaintiff would remain in their respective positions as previously inserted and thereafter if there be any amendment, (either by addition or substitution), then such amendment would come after the previously existing paragraphs.
43. Furthermore, where a new paragraph is being brought on board as a result of the amendment or Further amendment, then the new paragraph, bearing a resembling number but with such a feature to distinguish it from the original paragraph, would then follow immediately after the previous paragraph, which is sought to be amended or Further amended.
44. By analogy, what the Respondents could have done is to maintain what was paragraph 7 to 18 of the amended Plaintiff in the manner in which same were contained in the immediately preceding pleading and thereafter add the new paragraphs in a manner to follow the previous existing paragraphs, provided that the subsequent paragraphs relate to the same subject alluded to in the immediate preceding paragraphs.
45. Additionally, Learned counsel for the Respondents would thereafter be called upon to either cross the previous and existing paragraphs, which are sought to be amended by using the requisite ink, namely, red for the first amendment and any other color (whether green or blue) for subsequent amendments. Invariably, the amendment would be done by either canceling or underlining.
46. Nevertheless, it is important to point out that the amendments or Further amendments ought not to distort the orientation or arrangement which was hitherto obtaining in the previous pleadings, such that what was obtaining in one part of the previous pleading, is eliminated and removed and taken to a completely new segment of the Further amended pleading, so as to create a complete muddle.
47. It is instructive to state and underscore that what the Plaintiffs/Respondents have done is to upset the established Rules of procedure by undertaking the Further amendment in a very un-usual manner, where one removes the previous paragraph and extrapolates same to a different segment of the further amended pleading whilst on the other hand replacing same with new insertions.
48. To surmise, it is my considered view that the manner in which the amendments contained in the body of the Further amended Plaintiff has been done is contrary to and in contravention of the established practice relating to amendments of pleadings and in particular the provisions of Order 8 Rules 7(2) and (3) of the Civil Procedure Rules, 2010.

Issue Number 2

Whether the Further amended Plaintiff ought to be struck out on account of the infringements complained of or otherwise.

49. Having found and held that the Further amended Plaintiff dated the 29th September 2022 is contrary to and in contravention of the established practice relating to amendments; as well as the provisions of Order 8 Rules 7(2) of the Civil Procedure Rules, 2010; the question that now needs to be addressed



is whether such breach and infringement of the rules warrants striking out of the Further amended Plaintiff and by extension the entire suit.

50. Before venturing to address and resolve the issue herein, it is appropriate to point out and underscore that the subject suit touches on and concerns a claim amounting to more than Kes.264, 000, 000/= Only, which is being claimed as against the Defendants before the Honourable court.
51. Having pointed out and highlighted the value of the dispute beforehand, it is now relevant and imperative to juxtapose the procedural infractions complained against as against the nature and magnitude of the claim obtaining before the court.
52. In my humble view, whereas the Learned counsel for the Respondents have not duly and appropriately complied with the rules pertaining to amendment of pleadings, the breach and violation, whose details have been discussed herein before, do not strike me as being worthy of non-suiting the Plaintiffs/ Respondents and effectively, driving same away from the seat of Justice.
53. Additionally, despite the prejudice and inconvenience caused by the re-orientation of the Further amended Plaintiff and the incidental muddle attendant thereto, the 1st Defendant/Applicant herein, in my view, can still be able to craft and formulate appropriate defense in response to the Further amended Plaintiff.
54. In any event, it is not lost on me that whilst crafting pleadings with a view to propagating the proceedings before the court, the parties are called upon to exercise due diligence and to formulate the pleadings in such a manner to articulate the cause of action, with sufficient clarity and specificity. However, the manner of generating pleadings does not require mathematical accuracy, perfection and exactitude.
55. Suffice it to point out that the primary concern of the Court, should ordinarily be to ascertain and authenticate, whether the thrust/ gravamen of the Cause of action, complained of, can be gathered from the totality of the rubble placed before the Honourable Court or otherwise.
56. To this end, it is appropriate to recall the holding of the court of appeal in the case of Mumo Matemu versus Trusted Society of Human Rights Alliance (2013)eKLR, where the court succinctly stated and held as hereunder;

“(41) We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.

57. Nevertheless and in addition, it is instructive to underscore that Parties and their advocates ought to comply with and adhere to the Rules of procedure, so as to facilitate the expeditious hearing and disposal of legal dispute. For clarity, where pleadings are crafted in a precise and concise manner, the latitude and altitude of the issues in dispute, are well defined and circumscribed.



58. For coherence, in such a situation, the Parties themselves as well as the court are thus enabled to appreciate and comprehend the issues being ventilated and canvassed before the court. Clearly and for good measure, this is the gravamen of the holding of the court in the case of *Thorp v Holdsworth* (1876) 3 Ch. D. 637 at 639; which holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”

59. Notwithstanding the foregoing, it is noteworthy that there are instances where a party or his legal counsel, may fail to comply with and/or adhere to the Rules of procedure. Consequently, a question does and often arise as to whether such infringement ought, of necessity to deprive a litigant of a right of access to Justice, in the manner espoused and entrenched in Article 48 of *the Constitution*, 2010.

60. In my humble view, the answer to the question posed in the preceding paragraph obtains in the holding of the Supreme Court in the case of *Moses Mwicigi & 14 others versus Independent Electoral and Boundaries Commission & 5 others* [2016] eKLR, where the court stated as hereunder;

(65) This Court has on a number of occasions remarked upon the importance of rules of procedure, in the conduct of litigation. In many cases, procedure is so closely intertwined with the substance of a case, that it befits not the attribute of mere technicality. The conventional wisdom, indeed, is that procedure is the handmaiden of justice. Where a procedural motion bears the very ingredients of just determination, and yet it is overlooked by a litigant, the Court would not hesitate to declare the attendant pleadings incompetent.

(66) Yet procedure, in general terms, is not an end in itself. In certain cases, insistence on a strict observance of a rule of procedure, could undermine the cause of justice. Hence the pertinence of Article 159 (2) (d) of *the Constitution*, which proclaims that, “... courts and tribunals shall be guided by...[the principle that] justice shall be administered without undue regard to procedural technicalities”. This provision, however, is not a panacea for all situations befitting judicial intervention; and inevitably, a significant scope for discretion devolves to the Courts.

(67) As an instance, there are times when the disregard of Rule 33 of the Supreme Court Rules clearly undermines the Court’s ability to deliver justice to all the parties in a dispute. (This is concerned with the mode of instituting appeals). In such a situation, the shield of Article 159 (2) (d) will not be deployed by the Court in aid of the offending litigant. Such is, however, not the case in the instant appeal. Notwithstanding the failure to adhere to all the requirements of the Rule at the initial stages, by the appellants herein, their subsequent actions did ensure that the Court was not without all the requisite documentation, for undertaking a consideration of the matter.

61. From the foregoing ratio decidendi, it is evident and apparent that compliance with and adherence to the rules of procedure is mandatory. However, the Supreme court was alive to the fact that litigation is



conducted by human beings, who are prone to make mistakes and fall into lapses, inter-alia, failure to adhere to procedural rules. Consequently, the court noted and observed that there are instances where failure to comply with procedure ought not to invalidate the pleadings before the court.

62. To my mind, what the Supreme Court was alluding to was the fact that perfection or exactitude cannot be achieved at all times. Put differently, that there would be instances where mistakes and blunders would be made, but that such mistakes and/or blunders must not drive away a Party from the seat of Justice.
63. Perhaps, it is instructive to recall and reiterate the words in the case of Philip Keipto Chemwolo & another versus Augustine Kubende [1986] eKLR, where the Honourable court (Per Apaloo, JA) stated as hereunder;

“I think a distinguished equity judge has said:

“Blunders will continue to be made from time to time and it does not follow that because a mistake has been made that a party should suffer the penalty of not having his case determined on its merits.”

I think the broad equity approach to this matter is that unless there is fraud or intention to overreach, there is no error or default that cannot be put right by payment of costs. The court, as is often said, exists for the purpose of deciding the rights of the parties and not for the purpose of imposing discipline.”

64. Consequently and in the premises, I have to ask myself whether the inappropriate amendment contained in the body of the Further amended Plaintiff, are such that same would deny and/or deprive the Applicant herein of the ability to formulate her defenses/responses thereto.
65. Unfortunately, I come to the conclusion that despite the muddled-up paragraphs contained in the Further amended Plaintiff, it is still possible for the Applicant to craft and formulate his statement of Defense, without suffering undue prejudice.
66. Notably and in any event, it is imperative to underscore that striking out of pleadings, for whatever reason, ought to be exercised with circumspection and necessary precaution. Invariably, such an order can only issue in the clearest of cases and must be exercised as a last resort.
67. Furthermore, it also behooves the court to appreciate that striking out of a pleading can only be resorted to, where the impugned pleadings, in this case the Further amended Plaintiff, is hopelessly and irredeemably bad and thus beyond redemption by any amount of amendment.
68. Contrarily, where the impugned pleadings, are capable of being amended, with a view to facilitating the hearing and determination of the dispute on merits, then the court ought to be slow in striking out a suit. No wonder, the Eminent Judges of the old, espoused a position that striking out can only be applied as a matter of last resort and not otherwise.
69. In this respect, it suffices to restate and reiterate the succinct and elaborate position that was espoused in the case of D.T Dobbie (K) Ltd versus Muchina (1982)eKLR, where the court observed as hereunder;

“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”



70. Today, Article 50(1) of *The Constitution*, 2010 calls upon this court and every other court, to ensure that Parties are afforded an opportunity to be heard and to have Every dispute, resolved on merits before an impartial court or tribunal, as established by *the Constitution* or such other statute.
71. Inevitably, the striking out of the Further amended plaint, in the manner sought by the Applicant herein would ipso facto, deny and deprive the Plaintiffs/Respondents of the requisite opportunity to ventilate and canvass the substratum the dispute herein before the court. Clearly, such an endeavor will constitute an infringement of the Respondents Fundamental freedoms, especially, the Right of Access to Justice.
72. Premised on the foregoing, I come to the conclusion that despite the infringements of the rules of procedure and in particular the provisions of Order 8 Rules 7(2) of The Civil Procedure Rules, 2010, it would be unjust and contrary to equity, to strike out the Further amended Plaint dated the 29th September 2022, in the manner sought by the Applicant herein.

Final Disposition

73. In conclusion, it is important to underscore that litigants and their legal counsel ought to comply with and adhere to the Rules of procedure. Further and in any event, this court must not be taken to condone and sanction flagrant disregard of the Rules of procedure. For clarity and in appropriate cases, the court will not shy off from effecting the requisite order for striking out.
74. Nevertheless, I have pointed out that it would be a grave injustice to do so in respect of the subject matter and on the basis of the impugned infraction. In this regard, the order that commends itself to me is to dismiss the Application dated 14th November 2022.
75. However, given the fact that the impugned amendment does not accord with and/or abide by the established practice and the provisions of Order 8 Rules 7(2) of The Civil Procedure Rules, 2010, it cannot be said that the Applicant had no reasonable basis to propagate and canvass the current Application. In this respect, the Applicant is no doubt entitled to costs, which are assessed and certified in the sum of Kes.30, 000/= only.
76. Finally and for good measure, the Plaintiffs/Respondents are hereby ordered and directed to file a compliant Further amended Plaint, taking into account the observation by the court, as espoused in issue number one (1) herein before. For clarity, the requisite Further amended Plaint to be filed and served within 14 days from the date hereof.
77. For completeness, the Defendants shall thereafter be at Liberty to File and serve the requisite amended Statement of Defence, if any; and same to be filed and served within 14 Days from the Date of service.
78. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MAY, 2023.

OGUTTU MBOYA

JUDGE.

In the presence of:

Benson – court Assistant.

N/A for the Plaintiff/Respondent.

N/A for the 1st Defendant/Applicant.



N/A for the 3rd Respondent.

