



REPUBLIC OF KENYA



KENYA LAW
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**Mwiti v Bank of Baroda (Civil Case E029 of 2021)
[2022] KEHC 14636 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14636 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE E029 OF 2021
TW CHERERE, J
OCTOBER 27, 2022**

BETWEEN

FLORENCE GAKII MWITI APPLICANT

AND

BANK OF BARODA RESPONDENT

RULING

Background

1. By notice of motion dated September 19, 2022 brought under section 1A, 1B, 3 and 3A of the *Civil Procedure Act* cap 21 laws of Kenya and article 10(2)(b) and 159 of the *Constitution* and all enabling provisions of the law, applicant seeks leave to amend the plaint in terms of the annexed draft.
2. The application is based mainly on the grounds among others that the amendment will avail the court all necessary material for the determination of this case and will not prejudice the respondent.
3. Application is supported by an affidavit sworn by the applicant in which she reiterates the grounds on the face of the application.
4. Application is opposed *vide* a replying affidavit sworn by Richard Wanjau Ngahu, the respondent's manager at the Meru branch who avers that the amendments introduce a new cause of action and is prejudicial to respondent's case.
5. In a rejoinder, applicant filed another affidavit sworn on October 11, 2022 in which she avers that the amendment seeks to bring on board a 2nd defendant that allegedly signed the impugned charge documents.



Analysis and Determination

6. The general power of the court to amend pleadings is based on section 100 of Civil Procedure Act, and the parties to the suit have a right to amend their pleadings at any stage of the proceedings; for the purpose of determining the real question or issue raised by or depending on the proceeding. Similarly, amendments of pleadings are allowed under the procedural provision of order 8 rule 3 of Civil Procedure Rules, which states that *inter alia* that;

“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”.
7. In *Eastern Bakery vs Castelino* (1958) EA 461 O’Connor P stated that:

“It will be sufficient for purposes of the present case, to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side and that there is no injustice if the other side can be compensated by costs.
8. In *Central Kenya Ltd v Trust Bank Ltd & 5 others* [2000] eKLR the Court of Appeal held that: -

“A party is allowed to make such amendments as maybe necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.”.
9. The singular principle to be distilled from these cases and principles is that an amendment will be allowed if it does not cause injustice to the other side. Applying these principles to the current case, I find that the amendments is not strange to the respondent since it already forms part of its statement of defence. Respondent cannot therefore be prejudiced for what it has already pleaded.
10. From the foregoing analysis, it is hereby ordered that:
 1. The notice of motion dated September 19, 2022 has merit and it is allowed.
 2. Applicant shall file and serve the amended plaint within 14 days from today’s date
 3. The 1st defendant/respondent shall file and serve an amended statement of defence (if need be) within 14 days of service of the amended plaint
 4. The intended 2nd defendant shall file and serve the statement of defence within 30 days of service of the amended plaint
 5. Mention December 15, 2022 to confirm compliance and for directions

DELIVERED IN MERU THIS 27TH DAY OF OCTOBER, 2022.

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti



For the Plaintiff - Ms. Gikundi for Charles Kariuki & Kiome Advocates

For the Defendant - Mr. Kiruai for Kiautha Arithi & Co Advocates

