



Onsare v Acco Limited & another (Environment and Land Case E030 of 2022) [2025] KEELC 4322 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4322 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E030 OF 2022**

**JG KEMEI, J
MAY 29, 2025**

BETWEEN

CHILLION BOSIRE ONSARE APPLICANT

AND

ACCO LIMITED 1ST RESPONDENT

THE PARLIAMENTARY SERVICE COMMISSION 2ND RESPONDENT

RULING

(In respect of the Applicant's application dated 21/3/25)

1. What is before Court is the Applicant's application dated the 21/3/25 seeking in the main leave to amend his plaint as per the attached draft and that costs of the application be provided for.
2. The application is based on the grounds on the face of it and the supporting affidavit of Chillion Bosire Onsare, the Applicant herein sworn on the 21/3/25. He deposed that arising from the financial analysis by a firm of Accountants namely Apple Munch Enterprises, it has become necessary to amend the plaint to capture the correct projected and accurate revenue values and to allow the Court to determine the suit based on the actual and true state of affairs rather than on hypothesis.
3. Upon service of the application herein, the 1st Respondent opposed the application vide the replying affidavit sworn on 7/4/25 by John Peter Mbue Mwangi, a Director of the 1st Respondent who avowed that he is duly authorized to so swear the affidavit on behalf of the 1st Respondent. He lambasted the Applicant for lack of seriousness in prosecuting the case which has been adjourned severally at his instance. He termed the application as an afterthought and one lacking in merit and a good candidate for dismissal since in its very nature is prejudicial to the 1st Respondent.



4. The deponent raised issue with the timing of the application which in his view is being brought merely to delay the hearing and determination of the suit while the Applicant had ample time to move the amendments since 2023 when the matter was going through pretrial stage.
5. In addition, he deponed that the proposed amendments are but speculative and based on assumptions rather than verifiable financial records. That the claims are unverifiable and have no nexus to the 1st Respondent and as a result cannot be the basis to anchor any amendments. He maintained that allowing the amendments creates a shifty case hence making it difficult for the 1st Respondent to defend it. Inter alia, that the application seeks to introduce new issues and further that the delay in bringing the amendment is inordinate and unexplained.
6. The 2nd Respondent opposed the application vide the replying affidavit sworn by Jeremiah Nyegenye on the 14/4/2025. He avowed that the 2nd Respondent was served on the 21/11/23 with the financial report prepared by Salient Financial Consultants Limited. Consequently the 2nd Respondent sought to find out the registration and licensing status of the said accounting firm from the Institute of Certified Public Accountants (ICPSK) whereupon the response was that the said firm was not registered and licensed to offer accounting services in Kenya.
7. The deponent added that the proposed amendments are seeking to introduce new and substantial claims previously unclaimed and unpleaded in the plaint to the prejudice to its defence. To the extent that the Applicant has presented documents prepared by unregistered and unlicensed firm/persons, the Court was urged to find that the Applicant has approached the Court with unclean hands and therefore not deserving of the discretionary reliefs of the court. The Court was further urged to dismiss the application.

Directions on written submissions

8. On the 28/4/25 the Court in concurrence of the parties directed that the application be canvassed by way of written submissions which I have read and considered.

Analysis and determination

9. Having considered the application, the rival responses and the written submissions therein, I find that the key issue for determination is whether the application has merit.
10. The legal framework governing amendment of pleadings is found in Section 100 of the [Civil Procedure Act](#) which states 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.”

11. Order 8 Rule 5 of the [Civil Procedure Rules](#) states as follows: -

“(1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the Court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and, on such terms, as to costs or otherwise as are just.



(2) This rule shall not have effect in relation to a judgment or order.”

12. According to the authors of *Bullen and Leake & Jacob's Precedents of Pleading* 12th Edition, the powers of the Court to allow amendment are wide. The general principles guiding the Court cannot be exhaustive. They are; to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the Court at any stage of the proceedings (including appeal stages); 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; the exact nature of proposed amendment sought ought to be formulated and be submitted to the other side and the court; that adjournments should be given to the other side if necessary if an amendment is to be allowed; that if the Court is not satisfied as to the truth and substantiality of the proposed amendment it ought to be disallowed; that the proposed amendment must not be immaterial or useless or merely technical; that where the plaintiff's claim as originally framed is unsupportable an amendment which would leave the claim equally unsupportable will not be allowed ; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that 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 Limitation Acts but subject however to powers of Court to still allow such an amendment notwithstanding the expiry of current period of Limitation: that the Court has powers even (in special circumstances) to allow an amendment adding or substituting a new cause of action if the same 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 action by the party applying for leave to seek the amendment.
13. It is trite that 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.
14. Further, *Halsbury's Laws of England*, 4th Edition (re-issue) Vol.36(1) at Paragraph 76 sets out the purpose of an amendment as thus;

“...The purpose of the amendment is to facilitate the determination of the real question in controversy between the parties to any proceedings and for this purpose the Court may at any stage order the amendment of any document, either on application by any party to the proceedings or of its own motion.”
15. In the case of *Eastern Bakery vs Castelino* (1958) EA 461, the Court stated that;

“It will be sufficient ... 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.”
16. Similarly, in the case of *Central Kenya Ltd vs Trust Bank & 4 others* Civil Appeal No. 222 of 1998, the court addressed the underlying principle in amendment of pleadings and joinder of parties to be;

“all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”
16. In the instant suit the plaint was filed on 31/1/2021 and to date the hearing of the suit has not taken off for one reason or another. I agree with the Respondents that pretrial took place about 2 years ago and



the Applicant has had ample time to seek the current amendments and that bringing the application at the eve of the hearing is a clear testament of lack of preparedness on the part of the Applicant.

17. I have however perused the cause of action in the plaint and the amendments sought and in my considered, the amendments are not such as will create a new cause of action. As I understand it, the amendments in question merely seek to contextualize the Applicant's claim so as to clarify and bring into clearer focus the issues of the pleaded quantum of the loss and damages to enable the Court reach a determination on the issues in dispute. Admittedly the effect of the amendments is to enhance the quantum of loss and damage sought in the plaint.
18. The 2nd Respondent has raised issues with the status of the licencing and registration of the accountants of the Applicant and I am constrained to comment at the interlocutory stage as such matters are yet to be placed before the trial court, and in any event when they are, they will be subjected to cross examination to test their veracity as to their professional standing, as may be.
19. I am guided by the stage of the proceedings in this case. I note that the hearing is yet to start and therefore the level of prejudice is not as high as when the hearing had begun and parties had testified. Despite the delay, I am persuaded even with the amendments that justice will still be done to the parties in this case. I rely on the decision of the Court in the case of *Ketteman vs Hansel Properties Limited* (1988) 1 ALL ER 3S when the Court stated as follows;

“Whether an amendment should be granted is a matter for the discretion of the trial judge and he should be guided in the exercise of the discretion by his assessment of where justice lies. Many and diverse factors will bear on the exercise of this discretion. I do not think it is possible to enumerate them all or wise to attempt to do so. But justice cannot always be measured in terms of money and in my view a judge is entitled to weigh in and balance the strain the litigation imposes on the litigants, particularly if they are personal litigants rather than business corporations, the anxieties occasioned by facing new issues one way or the other. Further, to allow an amendment before a trial begins is quite different from allowing it at the end of the trial to give an apparently unsuccessful defendant an opportunity to renew the fight on an entirely different defence.”

16. I am further guided by the dicta of the Court in the case of *Mbaki & others vs Macharia & another* (2005) 2 EA 206, at page 210, when it stated as follows:

“The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard.”

16. Having not found any prejudice that will be occasioned to the Respondents, save, as can be ameliorated by costs, I am inclined to exercise my discretion in favour of the applicant and allow the application so that the issues between the parties may be adjudicated on merits.
17. Final disposal orders;
 - a. The Applicant's application dated the 21/3/25 is allowed on terms;
 - b. The Applicant to file and serve his amended plaint together with the pretrial bundles within 14 days from the date of this Ruling. In default these orders shall lapse automatically.
 - c. Upon service, the Defendants will be at liberty to file and serve their defence and or amended defence(s) together with pretrial bundles within 14 days.



- d. In default any pleadings filed out of time will stand expunged.
- e. The Plaintiff to meet the costs of the application.
- f. Thereafter parties to fix the matter for hearing expeditiously.

18. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF MAY 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered online in the presence of;

Mr Muchiri HB for Mr Waigwa for the Applicant

Mr Obura HB for Ms Kyumu for the 1st Respondent

Ms Jara HB for Mr Mwinyi for the 2nd Respondent

CA- Ms Yvette Njoroge

