



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ng'ang'a v Carrington Complex Limited & another (Environment & Land  
Case E112 of 2020) [2025] KEELC 410 (KLR) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 410 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E112 OF 2020  
OA ANGOTE, J  
FEBRUARY 6, 2025**

**BETWEEN**

**DAVID WAKAHU NG'ANG'A ..... PLAINTIFF**

**AND**

**CARRINGTON COMPLEX LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**THE REGISTERED TRUSTEES OF THE KENYA RAILWAYS STAFF  
RETIREMENT BENEFITS SCHEME ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiff has filed a Notice of Motion application dated 27<sup>th</sup> September 2023, pursuant to Order 8 Rule 3(1) of the Civil Procedure Rules. The Plaintiff has sought for the following orders:
  - a. The Plaintiff be granted leave to amend the Plaintiff dated 7<sup>th</sup> September 2020 in terms of the draft amended Plaintiff annexed hereto.
  - b. The costs of this application be provided for.
2. The application is supported by the grounds set out in the Affidavit sworn by David Wakahu Ng'ang'a, who asserted that he wished to amend the Plaintiff to incorporate the recent ruling in Judicial Review Case no. 29 of 2019; that even though the court indicated that the Business Premises Rent Tribunal did not have jurisdiction, it did not deal with the issue of illegal eviction without a lawful court order; and that there are further issues that arose after filing the Plaintiff which he also needs to plead.
3. The Plaintiff asserts that the amendment is necessary for a complete and effectual determination of all matters in controversy in this suit and that the amendments are necessary to correct the amount of money the Plaintiff is claiming.
4. The 1<sup>st</sup> Defendant opposed the application through the Grounds of Opposition dated 26<sup>th</sup> March 2023 and a Replying Affidavit of an even date. In the Replying Affidavit sworn by Ibrahim Adan, the



director of the 1<sup>st</sup> Defendant, he deponed that the applicant filed Environment and Land Court case number E112 of 2020 where he alleged that he was evicted from LR No. 1/422, Derby Court, off Ngong Road (the suit property) by the 1<sup>st</sup> Respondent despite an order by the Business Premises Rent Tribunal in BPRT Case No. 826 of 2018 David Wakahu Ng'ang'a vs Carrington Complex Limited, restraining the 1<sup>st</sup> Respondent from evicting the Plaintiff.

5. Mr. Adan deponed that this court delivered its ruling on the application on 21<sup>st</sup> September 2021 and dismissed it; that the court held that no tenancy existed between the Applicant and the 2<sup>nd</sup> Respondent and that there was no eviction contrary to the orders of the tribunal because the Applicant had vacated the suit property on 13<sup>th</sup> October 2018, while the tribunal in BPRT Case No. 826 of 2018 issued its order on 15<sup>th</sup> October 2018.
6. The deponent asserted that the 1<sup>st</sup> Defendant was aggrieved by the orders issued by the BPRT on 15<sup>th</sup> October 2018 and filed Judicial Review Case No. 418 of 2018 Carrington Complex Limited vs David Wakahu Ng'ang'a & Another seeking to quash the orders and that the matter was subsequently transferred to the Environment and Land Court and registered as Republic vs Chairman, Business Premises Rent Tribunal & another; Carrington Complex Ltd (Environment and Land Court Judicial Review 29 of 2019).
7. According to the 1<sup>st</sup> Defendant's director, the court delivered its judgment in ELC JR NO. 29 of 2019 on 16<sup>th</sup> March 2023 and quashed the entire proceedings together with the orders issued by the tribunal in BPRT Case No. 826 of 2018; that the court further held that the tribunal did not have jurisdiction to issue the ex-parte orders of 15<sup>th</sup> October 2018 because at the time the tribunal issued the order, no landlord-tenant relationship existed between the Applicant and the 1<sup>st</sup> Respondent and that this determination conclusively resolved the real issues in dispute in this case.
8. It is the 1<sup>st</sup> Defendant's case that the proposed amendment introduces a new cause of action that alters the character of this suit, in an attempt to rescue an already determined suit and that the application is made in bad faith, is an afterthought and is an abuse of the court process.
9. The 1<sup>st</sup> Defendant further asserted that it will suffer prejudice if the court allows the amendment because the Applicant has taken an unexplainably long time to seek the amendment which is based on matters always known to him and costs will not be an adequate compensation.
10. The 2<sup>nd</sup> Defendant also filed Grounds of Opposition in which it averred that:
  - a. The amendments intend to change the character of the suit against the Defendant and hence prejudicing the Defendants as the same seeks to introduce a new claim which is a new cause of action from the current one.
  - b. This application is an afterthought, concocted and manufactured with the sole intention of frustrating and obstructing the cause of justice.
  - c. There is undue delay on the plaintiff's party, for which no reason has been given and the court should not assist an indolent party who is guilty of delay.
  - d. Allowing the said amendment as per the application would be aiding a negligent pleader to defeat an accrued defence.
  - e. The Plaintiff's application is devoid of merit and is a proper candidate for dismissal with costs.
  - f. The Plaintiff's application is not well-taken, misconceived, untenable, frivolous, vexatious and abuse of court process.



11. The application was canvassed by way of written submissions which I have considered.

### **Analysis and Determination**

12. Having considered the Notice of Motion application, the replying affidavits and grounds of opposition filed by the Defendants, the issue for this court's determination is whether it should allow the Plaintiff to amend its Plaintiff.

13. The general power to amend pleadings is provided for under Section 100 of the [Civil Procedure Act](#). It 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.”

14. This provision is echoed under Order 8 Rule 5 of the Civil Procedure Rules as follows:

“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.”

15. Order 8 of the Civil Procedure Rules prescribes the process and requirements for amendment of pleadings. Under Order 8 Rule 1, a party may amend his pleadings without leave of the court at any time before the pleadings are closed. However, after the close of pleadings, a party must seek leave of the court before amending their pleading. This is prescribed under Order 8 Rule 3 of the Civil Procedure Rules as follows:

“[Order 8, rule 3.] Amendment of pleading with leave.

- (1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, 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.
- (2) Where an application to the court for leave to make an amendment such as is mentioned in subrule (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 subrule if it thinks just so to do.
- (3) An amendment to correct the name of a party may be allowed under subrule (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 subrule (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) An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action 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 suit by the party applying for leave to make the amendment.”

16. The Court of Appeal outlined the principles in amendment of pleadings in *Elijah Kipngeno Arap Bii vs Kenya Commercial Bank Limited* [2013] eKLR as follows: -

“The law on amendment of pleading in terms of section 100 of the *Civil Procedure Act* and Order VIA rule 3 of the repealed Civil Procedure Rules under which the application was brought was summarized by this Court, quoting from Bullen and Leake & Jacob’s *Precedents of Pleading - 12th Edition*, in the case of *Joseph Ochieng & 2 others vs. First National Bank of Chicago, Civil Appeal No. 149 of 1991* as follows:-

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is 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; that the proposed amendment must not be immaterial or useless or merely technical; 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.”

17. The Plaintiff has sought to rely on the case of *Institute for Social Accountability & Another vs Parliament of Kenya & 2 Others; Commission for the Implementation of the Constitution* (Interested Party) [2014] KEHC 7356 (KLR), where the court elucidated on the main purpose of amendments to pleadings. It held as follows;

“The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings.

Rule 18 of the Rules clearly stipulates that the court may permit an amendment at any stage of the proceedings. The court will normally allow parties to make such amendments as may be necessary for determining the real questions in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, no new or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that the amendment can be allowed without an injustice to the other side.”



18. The Court of Appeal in *Central Kenya Limited vs Trust Bank Limited* (2000) 2 E.A 365 similarly set out the following principles that guide the court in considering an application for amendment of pleadings:-

“A party is allowed to make such amendments as may be 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.”

19. The legal parameters governing the amendment of pleadings from the above cited decisions can be summed up as follows: the amendment should not introduce new or inconsistent cause of action or issue; the amendment should be made timeously; it should not affect any vested interest or accrued legal right and it should not prejudice or cause injustice to the other party, which prejudice or injustice cannot be compensated by costs.
20. It is not disputed that this suit was filed by way of a Plaint dated 7<sup>th</sup> September 2020. The Plaintiff averred in the Plaint that he entered into a Tenancy agreement dated 17<sup>th</sup> April 2008 with the 2<sup>nd</sup> Defendant as a protected tenant with regard to the suit property; that he developed and ran a vehicle showroom with state of the art modern facilities before he was forcefully evicted by the 1<sup>st</sup> Defendant on 12<sup>th</sup> October 2018 and that he enjoyed quiet possession of the suit property until 21<sup>st</sup> April 2016 when he was issued with a letter terminating the tenancy by the 2<sup>nd</sup> Defendant which was to take effect from 1<sup>st</sup> May 2016.
21. The Plaintiff asserted that he filed three References at the Business Premises Rent Tribunal. He stated that the first reference was BPRT No. 504 of 2016 *Wakahu Ng'ang'a vs Kenya Railway Staff and Retirement Scheme* filed on 25<sup>th</sup> May 2016; that the Reference was heard and the Tribunal ruled in his favor on 8<sup>th</sup> September 2017 and that the agreement dated 17<sup>th</sup> April 2008 created a controlled tenancy which could only be terminated in accordance with the procedures set out in Cap 30.
22. According to the Plaintiff, the second Reference, BPRT Case No. 564 of 2018 *David Wakahu Ng'ang'a vs Kenya Railway Staff and Retirement Scheme*, was filed when despite the earlier Tribunal orders, the 2<sup>nd</sup> Respondent issued a notice to the Plaintiff to vacate the tenancy premises, and that on 13<sup>th</sup> July 2018, the Tribunal granted the Plaintiff final orders restraining the 2<sup>nd</sup> Defendant from evicting and/or interfering with his tenancy on the suit premises.
23. However, on 12<sup>th</sup> October 2018, the Plaintiff asserted, the 1<sup>st</sup> Defendant forcefully removed him from the premises, causing him to suffer irreparable loss and damage.
24. The Plaintiff stated that he filed a third reference, BPRT Case No. 826 of 2018 *David Wakahu Ng'anga' vs Carrington Complex Limited*, where on 15<sup>th</sup> October 2018, the Tribunal issued orders barring the 1<sup>st</sup> Defendant from evicting and/or evicting him. In that reference, the Plaintiff had sought the following prayers:
- a. Reinstatement of the plaintiff on a tenant capacity to the suit premises LR No. 1/422 (Derby Court) off Ngong Road.
  - b. Removal of the Defendants' agents, their representatives, servants or any other person acting on behalf of eth defendants or any other person purporting to have an interest on the property as a tenant, lessee or licensee from the suit premises.



- c. An order for a permanent injunction restraining the defendants whether by themselves and/or their employees and/or their servants and/or their agents or any person acting on their behalf and/or under their mandate and or instructions from interfering with the plaintiff's peaceful occupation of the suit premises or harassing, threatening and/or intimidating and/or coercing and/or attempting to coerce the plaintiff into any consequent precipitate forceful action(s)
  - d. Special damages as particularized in the accountant's schedule in relation the site vandalized plot no, 1/422 located at Derby Court, Ngong Road dated 29<sup>th</sup> March 219 and found at pages 35-38 of the Plaintiff's bundle of documents marked DWN as follows:
    - i. Estimate loss on forceful eviction Kshs. 14,011,500.00
    - ii. Loss of expected revenue Kshs. 22,440,000.00
    - Total Kshs. 36,451,500.00
  - e. General and aggravated damages including exemplary damages for violation of constitutional rights, for trauma and mental distress.
  - f. Interest on Prayer A and B above from the date of eviction.
  - g. Costs of this suit and interest thereon.
  - h. Any other relief that the court may deem fair and just to grant.
25. The record shows that a ruling was issued in this case by Obaga J on 21<sup>st</sup> September 2021, in which he dismissed the Plaintiff's application for reinstatement in the suit property pending the hearing and determination of the suit.
26. The Plaintiff asserts that he seeks to amend his Plaint pursuant to the judgment entered in Judicial Review Case No. 29 of 2019 on 16 March 2023. In the judicial review matter, the Applicant (herein the 1<sup>st</sup> Defendant) sought that the court quashes the entire proceedings being Business Premises Rent Tribunal Nairobi BPRT Case No. 826 of 2018 together with the tribunal order of 15<sup>th</sup> October 2015 made by the Chairman, Business Premises Rent Tribunal, Nairobi.
27. In the Judicial Review Judgment, this court found that no landlord-tenant relationship could be inferred between the Plaintiff and the scheme as the Plaintiff's license to occupy the suit premises expired on 1<sup>st</sup> June 2018; that the tenancy was not a controlled tenancy as the tenancy was for a period exceeding five years; and that there was no proof of a renewed and legitimate agreement following the expiry of the initial licence. The court consequently held that there was no landlord-tenant relationship when the Tribunal issued the ex-parte orders of 15<sup>th</sup> October 2018.
28. The Plaintiff's proposed amendments have introduced a new issue, but arising from the same transaction that is, that his eviction was unlawful, as the same was done without a lawful court order.
29. Significant amendments have been proposed in the prayers. The proposed prayers in the Amended Plaint are for special damages as particularized in the accountant's schedule in relation the site vandalized amounting to a total of Kshs. 36,451,500; general and aggravated damages including exemplary damages for violation of constitutional rights, for trauma and mental distress and unlawful distress.
30. On consideration of the above decisions, it is apparent that the Plaintiff seeks to amend the Plaint in line with the findings of this court. The Plaintiff is seeking to narrow down the issue as to whether his



eviction lawfully and whether damages are payable. This is not a new claim. The claim arises from the same cause of action.

31. As to whether the application was made timeously, this court notes that the amendments are pursuant to the judgment of this court in ELC Judicial Review Case No. 29 of 2020, which was delivered on 16<sup>th</sup> March 2023. This application was filed on 27<sup>th</sup> September 2023 constituting a delay of six months.
32. Considering that the suit has not proceeded to hearing, the court finds the delay not to be inordinate. On whether the proposed amendments will cause prejudice or injustice to the Defendants, this court is of the view that the proposed amendments, which narrow down the Plaintiff's claim to the issues of eviction and damages, will not prejudice the Defendants but will enable the court to succinctly deal with the pending issues.
33. For these reasons the Plaintiff's application dated 27<sup>th</sup> September, 2023 is allowed as follows:
  - a. The Plaintiff be and is hereby granted leave to amend the Plaint dated 7<sup>th</sup> September 2020 in terms of the draft amended Plaint annexed hereto.
  - b. The Amended Plaint to be filed and served within 14 days from the date of this Ruling.
  - c. The Defendants to file their Amended Defences within 14 days of service.
  - d. The costs of the application to be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**O. A. Angote**

**Judge**

In the presence of;

Mr. Anyona holding brief for Kanjama (S.C) for Plaintiff

Ms Kimani holding brief for Kiragu Kimani for 1<sup>st</sup> Defendant

Ms Chebet holding brief for MR. Adano for 2<sup>nd</sup> Defendant

Mr. Wafula for 2<sup>nd</sup> Defendant

Court Assistant: Tracy

