



**AGK (Suing on Behalf of WK – Minor) v Oyatsi (Civil Suit E197 of 2021)
[2025] KEHC 1519 (KLR) (Civ) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1519 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL SUIT E197 OF 2021**

JN MULWA, J

FEBRUARY 13, 2025

BETWEEN

AGK PLAINTIFF

SUING ON BEHALF OF WK – MINOR

AND

DONALD P OYATSI DEFENDANT

RULING

1. By an Application dated 6/11/2023 the plaintiff sought leave of court to amend its plaint dated 4/08/2021 in terms of a draft amended plaint annexed hereto, which the plaintiff urges that it be deemed as duly filed and served upon payment of requisite court fees.
2. It is premised upon Order 1 Rule 9, 10 and 25, Order 8 Rules 3, 4, 5 and 6(2) of the Civil Procedure Rules (CPR) and Section 1A, 1B, 34 and 100 of the *Civil Procedure Act*, (CPA) and the grounds on its face together with a supporting Affidavit sworn by Chumo C Sheila and Advocate with conduct of the suit on behalf of the plaintiff.
3. The grounds necessitating the amendments are stated as to bring before the court the real matters in controversy between the parties so as to be determined on their true and substantive merits and based upon relevant information that the applicants advocates have come across upon coming on record and scrutiny discovered the said information which it states to be substantially based on same facts and relief claimed by the plaintiff in the plaint as far as the award by the Kenya Medical Practitioners and Dentists Board that has no power to enforce its award as is a reserve of the court.
4. The applicant states that due to the fundamental facts that were omitted in the plaintiff's pleadings, the applicant seeks, by the intended Amendment to provide the particulars of negligence, which would assist the court in the determination of the suit.



5. The objection to the prayers sought by the plaintiff are stated in the filed grounds of opposition dated 5/06/2024 stating that the application is incompetent and is in breach of mandatory provisions of Order 51 Rule 1 of the Civil Procedure Rules.
6. In addition, the defendant states that the intended amendments if allowed will change both the action and character of the case and will introduce a new claim against the defendant and therefore an abuse of court process as the claim certified for hearing after pre-trial stage will change, and therefore has urged for its dismissal.
7. Only the Plaintiff/Applicant filed submissions dated 26/08/2024.

Analysis and Determination

8. The main reasons advanced by the plaintiff for the necessity for the proposed amendments is that the plaintiff who was representing herself in the claim of negligence against the defendant sought various damages for various acts of negligence occasioned by the defendant while her child was under his care for medical attention, and while she successfully prosecuted the claim against the Kenya Medical Practitioners and Dentists Council (KMPDC) and a decision issued in her favour under Section 20(6) of the Act Cap 23 Laws of Kenya, due to her ignorance of court procedures filed the suit in believe that it would only be for the enforcement of the KMPDC's decision, and therefore failed to state crucial material facts to demonstrate a fully pledged case, with a clear cause of action.

That it was after she engaged the current advocates that it became clear upon advice that the KMPDC lacked authority to award compensation as such power is only vested with the court.

9. The plaintiff submits that the proposed amendments are necessary so as to capture the real cause of action to obviate any wastage of precious court time and a miscarriage of justice due to lack of legal advice.
10. Upon the foregoing the issue for the court's determination is whether the plaintiff ought to be granted leave to amend the plaint.

Section 100 of the CPA empowers the court 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 proceedings 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 pleading.”

11. The court has considered the proposed amendments at the draft-amended plaint. Order 8 Rule 5 Civil Procedure Rules provides:-

“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.”

12. While ignorance is not a defence in law, the court in the case of *Institute for Social Accountability & Another v. Parliament of Kenya & 3 Others* [2014]eKLR held that:-

“the object of amendment of pleadings is to enable the parties to alter their pleadings, 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”.

13. In the same court pronouncement in the above case, the court rendered that:-

“a party that wishes to amend its pleadings at any stage of the proceedings may do so with leave that the court will normally allow parties to make such amendments as may be necessary..... to avoid a multiplicity of suits, provided there has been no undue delay, or 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”

14. The court is also minded that under Order 8 Rule 3(2) CPR,

“an amendment may be allowed under sub rule (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 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”.

15. The court has considered the Learned Judges of the superior Courts pronouncements on subject and the legal provisions underpinning the subject of amendments as stated above. The court is thus empowered to allow amendments to assist the court to determine a suit on all relevant facts, and if omitted by whatever reasons, if leave is sought upon application or on its own volition if the need and necessity to amend arises, proceed to allow the amendments.

16. The court has pronounced itself in the case of Institute for Social Accountability (supra) that an amendment ought to be allowed even if the cause of action changes so long as the facts relied upon for the amendments sought are the true facts the parties really and finally intend to rely on. Thus the court is clothed with wide powers to allow amendment of pleadings for a fair and just hearing to be conducted in terms of Article 50 of the *Constitution* as well as under Sections 1A, 1B and 3A of the CPA, being to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes for the just determination of the proceedings and to avoid multiplicity of suits and at Section 3A CPA further grants the court unlimited inherent power to make such orders as may be necessary for the ends of justice to be met.

17. Upon the above, the court is satisfied that the amendments the Plaintiff seeks leave to amend the application are necessary and will not unduly prejudice the interests of the defendant, as it will be at liberty to amend its statement of defence once filed and served. The amendments in the courts opinion will not only save courts precious time by having the plaintiff’s case brought to the court and heard on all the material facts and to avoid filing of multiple suits based on the same facts, and thus the litigation will be less costly and affordable, proportionate and justly determined as mandated by Section 3A of CPA

18. The prejudice that the defendant may suffer if the orders sought are granted will be adequately compensated in costs.

For the foregoing:-

a. The Plaintiffs application dated 6/11/2023 is allowed.



- b. The amended plaint shall be filed and served in terms of the draft-amended plaint within 7 days of this ruling.
- c. The defendant will be at liberty to amend its statement of defence within 14 days of service
- d. Costs of this application shall be borne by the plaintiff in any event.

Orders accordingly.

DATED, SIGNED AND DELIVERED NAIROBI THIS 13TH DAY OF FEBRUARY 2025.

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JANET MULWA.

JUDGE

