



**Ngumi v Njoroge; Chairperson, Disciplinary Committee Law Society of Kenya & another
(Interested Parties) (Civil Case E032 of 2024) [2025] KEHC 3810 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3810 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE E032 OF 2024
DO CHEPKWONY, J
MARCH 7, 2025**

BETWEEN

ISAIAH WAWERU NGUMI APPLICANT

AND

JULIUS MUCHENE NJOROGE RESPONDENT

AND

**CHAIRPERSON, DISCIPLINARY COMMITTEE LAW SOCIETY OF
KENYA INTERESTED PARTY**

DATA PROTECTION COMMISSIONER INTERESTED PARTY

RULING

1. Before the court for determination is the Notice of Motion application dated 8th October, 2024 filed seeking the following orders:
 - a. That the Honourable Court be pleased to grant leave to the Applicant to amend the Plaintiff dated 13th August, 2024 in terms of the annexed Amended Plaintiff.
 - b. That the Amended Plaintiff be deemed as duly amended and filed upon the waiver of the requisite court fees.
 - c. That any further orders and directions to issue as may deem fit in the circumstances.
 - d. That the costs be in the cause.
2. The Application is based on the grounds as set out on its face and reiterated in the Supporting Affidavit of Isaiah Waweru Ngumi sworn on the instant date. According to the Applicant, the Firm of J. M. Njoroge & Co. Advocates, the 1st Respondent has detained land Sales Agreements wherein the Applicant/Plaintiff appended his signature on 28th February, 2024 against his will. The Applicant goes



on to state that he is seeking joinder of the 3rd and 4th Interested Parties to enable the court to effectively adjudicate upon and determine the real issues in controversy and that they are intended to enjoin the Firm of J. M. Njoroge & Co. Advocates, being the custodians of the signed land sale agreements and the Hon Attorney General as the Legal representative of the 2nd Respondent herein. The Applicant holds that it will be in the interest of justice that the application be allowed as prayed.

3. The Respondent opposed the application through Notice of Preliminary Objection dated 12th November, 2022 on the basis that the application is frivolous, vexatious and abuse of court process since the pleadings were yet to close.
4. The Applicant filed submissions dated 30th November, 2024 stating that he has a right to amend his suit at any stage before close of pleadings as provided for under Order 8 Rules 3, 5 and 8 of the Civil Procedure Rules, hence the Notice of Preliminary Objection is misplaced and bad in law. He cited the case of Balaji (EPZ) Limited v Nairobi City Water & Sewerage Company Limited (Civil Suit 258 of 2018) [2022] KEHC 11160 (KLR) (Civ) (31 May 2022) (Ruling) to submit that the courts have unfettered discretion to allow amendments of pleadings. He thus urged the court to allow his application and dismiss the Notice of Preliminary Objection.
5. In the Respondent's submissions dated 10th December, 2024, he submits that the Applicant is seeking redress for alleged professional misconduct by the Defendant who is an advocate of the High Court yet complaints against an advocate ought to be raised at the Advocates Complaint Commission. He holds that this court lacks jurisdiction since the Applicant has not exhausted all remedies available to him and thus suit should not be allowed as it is premature. With respect to the notice of motion application dated 8th October, 2024, the Respondent has submitted that it is a waste of court's time since pleadings had not closed in accordance with the provisions under Order 8 Rule 1 of the Civil Procedure Rules.
6. The 2nd Interested Party filed Submissions dated 19th November, 2024 also stating that the Applicant had not exhausted all avenues when filing this suit in this Court so that the same is premature and the court should down its tools.

Analysis and Determination

7. It is worth-noting that given that this Court had issued directions only in respect to the Notice of Motion application dated 13th October, 2024 and that is what is to be addressed in this ruling. The other issues raised herein may be addressed thereafter. The principles that guide amendment of pleadings were explained by the Court of Appeal in the case of Ochieng and Others –vs- First National Bank of Chicago Civil Appeal No.147 of 1991. The said principles are outlined as follows: -
 - a. The power of the court to allow amendments is intended to determine the true substantive merits of the case;
 - b. the amendments should be timeously applied for;
 - c. power to amend can be exercised by the court at any stage of the proceedings;
 - d. 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;
 - e. 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 Limitations Act subject however to powers of the court to still allow and amendment notwithstanding the expiry of current period of limitation.



8. It is trite that amendment of pleadings can be done without leave of the court if it is done before pleadings close. This is in line with Order 8 Rule 1 of the Civil Procedure Rules which provides as follows:-

(1) A party may, without the leave of the court, amend any of his pleadings once at any time before the pleadings are closed.

9. The next question then is when do pleadings close? According to Order 2 Rule 13 of the Civil Procedure Rules:-

(13) Close of pleadings [Order 2, Rule 13]

“The pleadings in a suit shall be closed fourteen days after service of the reply or defence to counterclaim, or, if neither is served, fourteen days after service of the defence, notwithstanding that any order or request for particulars has been made but not complied with.”

10. In this case the Defendant filed Defence on 4th September, 2024 but the Plaintiff did not file any Reply to the Defence. Therefore close of pleadings ought to have been 14 days after service of the Defence. In this case, it is not clear from the proceedings when the said service was done to establish whether or not the pleadings had already closed. And even then in its own Notice of Preliminary Objection dated 12th November, 2024, the Defendant has said that the pleadings are yet to close.

10. Be that as it may, this Court has unfettered discretion to allow amendments of pleadings at any time before close of pleadings so as to determine the real issues in controversy, this Court finds the application by the Applicant meritable and proceeds to allow the same in the following terms:-

- a. That leave be and is hereby granted to the Applicant to amend the Plaintiff dated 13th August, 2024 in terms of the annexed Amended Plaintiff.
- b. That the Amended Plaintiff be deemed as duly amended, filed and served upon payment of the requisite court fee if any.
- c. The Defendant is granted leave of fourteen (14) days upon service of duly filed Amended Plaintiff to file and serve an Amended Defence, if need be.
- d. The Interested Parties are equally granted leave to file and serve their pleadings in the matter within fourteen (14) days hereof.
- e. Mention on 7th April, 2025 before the Deputy Registrar for parties to confirm compliance and take further directions.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 7TH DAY OF MARCH, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Odhiambo for 2nd Interested Party

Plaintiff/Applicant in person – present



