



**Nyongesa & another v State Law Office & another (Judicial Review E236 of 2024)
[2025] KEHC 4196 (KLR) (Judicial Review) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4196 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
JUDICIAL REVIEW
JUDICIAL REVIEW E236 OF 2024
JM CHIGITI, J
APRIL 2, 2025**

BETWEEN

JOHN MECHUMO NYONGESA 1ST APPLICANT

SAFIRI SALAMA PRESERVATION FOUNDATION 2ND APPLICANT

AND

STATE LAW OFFICE 1ST RESPONDENT

NATIONAL HEROES COUNCIL 2ND RESPONDENT

RULING

1. This court was moved by way of a Chamber Summons dated 15th October, 2024.
2. When the case was mentioned on 27th March, 2025 the Applicants moved the court orally for an order to issue to allow the amendment of the Chamber summons.

The Applicant's case;

3. It is their case that when they sought leave on 15th October, 2024, the list of the proposed heroes had 130 individuals.
4. They argue that the need to amend their application for leave is driven by the fact that on the 20th October, 2024, 12 more individuals were added to the list making a total of 142 as a result of which the applicants apply for prayer 2 and 3 of the Chamber Summons to read 142 as opposed 130 individuals.
5. They also abandon prayer 2D and retain 2A, B and C while they conceded that Prayer 3 is spent.
6. It is further their case that one cannot make two applicants on the same issue.



The Respondent's case;

7. The application is vehemently opposed. It is the Respondent's case that the list of 130 heroes was interim in nature.
8. It is the respondent's case that the list was meant for public participation in the event any litigant wanted to challenge the nomination.
9. It is their case that the advertisement was on 6th August, 2024 with 130 individuals. It is the respondent's case that the list with 142 individuals wasn't challenged.
10. The suit was filed on 15th October, 2024 and H.E. The President awarded the successful nominees on 20th October, 2024.

Analysis and determination;

11. The only issue that presents for determination is whether or not the applicants are entitled to the order to amend Chamber Summons application dated 15th October, 2024.
12. In order to determine this issue, this court is guided by the Supreme Court in the case of *Nathib Jama Adam vs Abdikhaim Osman Mohamed & 3 Others* [2014] eKLR. (See paragraph (68) where the Supreme Court had this to say concerning whether or not chamber summons could be considered to be a pleading:

“(68) Pleadings institute suits and lead to joinder of issues, thereby forming “instituting documents,” and “responses”. Thus, a Chamber Summons when in use as an interlocutory application, cannot augment the substantive issues after joinder of issues has already occurred. One substance of the right to a fair trial, under Article 50(1) of the Constitution, is that parties must know the case against them. This position has been upheld in several cases, inter alia: *Philip Mugo Mucheru v Mbeu Kithakwa*, Nyeri High Court Civil Appeal No. 4 of 2007 (Kasango J.); *Samuel Ndiba Kihara & Anor. v Housing Finance Company of Kenya Ltd. & 2 Others*, Nairobi HCCC No. 638 of 2006 (Kasango J.); *Jecinta Wanjiru Muiruri v Jane Wangari Mwangi & Anor*, Nairobi HCCC No. 184 of 2006 (Osiero J); and *Fredrick Mwangi Nyaga v Garam Investments & Anor*, Nairobi HCCC No. 249 of 2013. The only exception arises under Order 53 of the *Civil Procedure Rules, 2010* where the Chamber Summons is used to commence judicial review proceedings. (See *Commissioner of VAT v Atul Shah*, [1999] 2 EA 58, *Boniface M. Opiyo v Oyoko Olunde & Anor*, [1997] LLR 7789, *In the Matter of Kenya Wildlife Service Act* and *In the Matter of the Civil Service Reform Programme and the Kenya Wildlife Retrenchment Programme*, [1998] LLR 7645). We would signal that, as the procedures of the legal process continue to evolve, yet other exceptions may emerge. This has already happened in the litigation of children's matters, under the Children Act, 2001 (Act No. 8 of 2001), in which some causes are instituted using Chamber Summons.

The power to amend pleadings can be exercised at any stage of the proceedings before judgment. See Bullen and Leake & Jacob's *precedents of pleading*, 12th Edition, which provides that: “...power to so amend can be exercised by the court at any stage of the proceedings (including appeal states); 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....a fresh action....”

13. This court is satisfied that in so far as Judicial Review Applications are concerned, a Chamber Summons is a pleading given the fact that judicial review suits are instituted by way of a Chamber Summons whenever an applicant moves the court under Order 53 of the Civil Procedure Rules.
14. However, in cases where an applicant opts to move the court under The *Fair Administrative Action Rules 2024*, The Origination Notice of Motion becomes the initiating pleadings.
15. Having settled the first sub-limb of the issue, this court must then determine whether or not the Chamber Summons can be amended.
16. In *Halsbury's Laws of England*, 4th Edition (reissue) Vol. 36 (1) paragraph 76, it is stated as follows on amendment of pleadings;

“...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....”
17. In the instant suit, it is not in dispute that the Respondent had initially put out a list of 130 nominees which informed the Applicant's application for leave. Afterwards the Respondent increased the number to 142.
18. This court is satisfied that in order to get to the root of the suit once and for all there is need to incorporate the additional 12 nominees' individuals in the application.
19. Looked at differently, it would be unreasonable to expect the 12 applicants to file a fresh suit for the additional 12 nominees based on the same cause of action as the one in the existing suit.
20. In any event, this suit is still at its preliminary stage and the pleadings have not been closed.
21. This court is satisfied that the applicants have made out a case for the grant of the orders sought.

Order:

The Oral application is allowed amending the chamber summons dated 15th October, 2024 in the following terms;

1. Prayer 2 and 3 shall read 142 as opposed 130 individuals.
2. Prayer 2D is abandoned.
3. Prayer 2A, B and C shall be retained.
4. Prayer 3 is spent.
5. Parties shall comply with the directions dated October 16, 2024.
6. The matter shall be mentioned for reporting compliance on June 30, 2025.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF APRIL 2025

.....
J. CHIGITI (SC)



JUDGE

