



Cherono alias Saeed Saeed v Ruto (Environment and Land Appeal E055 of 2024) [2025] KEELC 3879 (KLR) (19 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3879 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E055 OF 2024**

CK YANO, J

MAY 19, 2025

BETWEEN

STEPHEN CHERONO ALIAS SAEED SAEED APPELLANT

AND

DANIEL LADAMA RUTO RESPONDENT

RULING

1. Vide a Notice of Motion dated 6th February, 2025, the Appellant/Applicant sought the following orders: -
 - a. Leave be granted to the Appellant/Applicant to amend his notice of motion dated 18th December, 2024.
 - b. The draft – amended notice of motion annexed herewith be deemed duly filed and served upon payment of requisite court fees.
 - c. Costs of this application be in the cause.
2. The application is based on the 8 grounds on the face of the application and supported by the affidavit of even date sworn by Rhiter Luseria an Advocate in conduct of the matter on behalf of the Applicant.
3. Learned counsel for the applicant deponed that the Applicant herein filed an application dated 18th December, 2024 and the court issued interim stay of execution orders on 25th December, 2024. That the matter later came up in court on 28th January, 2025, and the court directed the Appellant/Applicant to file a supplementary affidavit and submission to the subject application, and in the course of drafting a supplementary affidavit and submissions, the Applicant’s counsel noted that an error of a date in prayer (c) of the Notice of motion could not be cured either through a supplementary affidavit or submission. That the said clerical error was made during drafting of the notice of motion by the



applicant's counsel on record. It is therefore counsel's claim that a mistake on her part should not be visited on an innocent party.

4. It is the Applicant's contention that it is in the interest of justice that leave be granted to him to file an amended notice of motion. It is further contended that the application has been brought expeditiously, and it is only fair, just and equitable that leave be granted to amend the notice of motion dated 18th December, 2024 to capture the correct prayers for the proper determination of the rights, interests and liabilities of the parties in this appeal. The Applicant's counsel has annexed copies of the interim orders of stay issued on 25th December, 2024 and the draft amended notice of motion marked "SC-1 and "SC – 2".
5. The application was opposed. The Respondent filed a Replying Affidavit dated 20th February, 2025 and a Notice of preliminary objection of even date. The objection is on the grounds, inter alia, that this court has no jurisdiction to determine the application in the absence of a memorandum of appeal. That an application and an affidavit that are faulty can only be withdrawn and not amended.
6. In the Replying affidavit, the Respondent reiterated the grounds raised in the preliminary objection, and stated that no judgment was delivered on 28th November, 2024. The Respondent further stated that this court could not probably have sat on 25th December, 2024 being a public holiday, and therefore no orders could have been issued on that day, and any claim to the contrary is false and intended to mislead the court.
7. The Respondent further deponed that the appeal herein is against a ruling made on 5.11.2024 after which the case proceeded to judgement on 29.11.2024. That the appeal has been overtaken by events and a party cannot stay a judgement he has not appealed against.
8. The application was canvassed by way of written submissions. The Applicant filed submissions dated 26th April, 2025 while the Respondent filed his dated 20th April, 2025. I have read and considered the rival submissions together with the authorities relied on and I need not reproduce the same in this ruling.

Analysis and determination;

9. Looking at the application, the supporting affidavit, the replying affidavit, the preliminary objection and the rival submissions, it is my considered view that the issues for determination are:-
 - a. Whether an application can be amended.
 - b. Whether the Applicant should be granted leave to amend the Notice of motion dated 18th December, 2024.
 - c. Who should pay costs?
10. The courts will normally allow amendments of pleadings at any stage of the proceedings if it can be done without occasioning injustice or prejudice to the other party and on such terms as to costs or otherwise as may be just. In this case, the Applicant seeks to amend the notice of motion dated 18th December, 2024 in the manner proposed in the attached draft. It is however, the Respondent's submission, in my understanding, that the same can only be withdrawn or struck out and not amended.
11. The general power to amend pleadings is donated by section 100 of the [Civil Procedure Act](#) and is provided for under Order 8 Rule 5 of the [Civil Procedure Rules](#) which reads as follows: -

“5.



- (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 judgement or order.”

12. It is clear from the above provisions of the law that the court has discretionary power to amend pleadings at any stage before judgment for purposes of determining the real question or issue between the parties. That discretionary power must however be exercised judiciously and not whimsically. It is also clear that the court may, in its discretion allow the amendment to correct any defect or error to substitute a new party.
13. Order 8 Rule 3 of the *Civil Procedure Rules* also empowers the court at any stage of the proceedings, on such terms as to costs or otherwise, allow any party to amend his pleading.
14. The Applicant has submitted that what is sought to be amended is a clerical error which arose during drafting of the notice of motion sought to be amended. In *Eastern Bakery v Castelino* (1958) EA461, the Court of Appeal for Eastern Africa held:-

“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 The main principle is that an amendment should not be allowed if it causes injustice to the other side.”

15. In the instant case, the Respondent has not shown what injustice or prejudice, if any, he will suffer if the applicant is granted leave to amend his application. On the contrary, if such leave is granted, not only will the Respondent respond to application upon being served but will also be entitled to costs.
16. Accordingly, and for the reasons hereinabove, I exercise my discretion and dismiss the Respondent’s preliminary objection. The notice of motion dated 6th February, 2025 is allowed and orders granted as follows: -
 - a. That leave to amend the Notice of Motion dated 18th December, 2024 is hereby granted.
 - b. The amended Notice of Motion, in terms of the attached draft, to be filed and served in fourteen (14) days and in default, the leave to automatically lapse.
 - c. Costs of the application are awarded to the Respondent.
17. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 19TH DAY OF MAY, 2025.

HON. C. K. YANO

JUDGE, ELC

Ruling delivered virtually in the presence of: -

Ms. Luseria for Appellant.

Dr. Chebii for Respondent .



