



REPUBLIC OF KENYA



**Kinyua v Munge & another (Civil Appeal E121 of 2025)
[2025] KEHC 12231 (KLR) (Appeals) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12231 (KLR)

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

APPEALS

CIVIL APPEAL E121 OF 2025

TW CHERERE, J

MAY 22, 2025

BETWEEN

ANTONY KINYUA APPELLANT

AND

GEORGE NDINYE MUNGE 1ST RESPONDENT

GILMUT COMPUTERS LIMITED 2ND RESPONDENT

RULING

“ Amendments are permitted where they aid in the just determination of the real issues in controversy without causing prejudice.”

1. Before the Court is a Notice of Motion dated 05th May 2025, brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act*, and Order 8 Rules 3(5) and 5, as well as Order 51 Rule 1 of the *Civil Procedure Rules*. The Appellant seeks leave to amend the Notice of Motion dated 14th February 2025 to include the following prayers:
 1. Leave for the firm of Rashid Ngaira & Associates to come on record for the Appellant
 2. In the alternative, that the Court dispenses with the requirement for leave for counsel to come on record due to the urgency of the matter
2. The application is supported by an affidavit sworn on 05th May 2025 by Mr. Rashid Ngaira, Advocate, asserting that the amendments sought are minimal and will not prejudice the Respondent.
3. The 1st Respondent opposes the application through Grounds of Opposition dated 14th May 2025, contending that:



1. The application seeks to defeat the objection by the 1st Respondent that the firm of Rashid Ngaira & Associates is not properly on record
2. The amendment seeks to determine the appeal prematurely.

Issue for Determination

4. I have considered the application in light of the supporting affidavit and grounds of opposition. The primary issue for determination is whether the Court should grant leave to the Appellant to amend the Notice of Motion dated 14th February 2025.

Analysis and Determination

5. The principles governing the amendment of pleadings are well established. Order 8 Rule 5(1) of the *Civil Procedure Rules* provides:

“For the purpose of determining the real question in controversy between the parties, the court may at any stage of the proceedings allow any party to amend his pleadings on such terms as to costs or otherwise as may be just...”

6. Although the application seeks to amend an interlocutory application rather than a pleading in the strict sense, the principles applicable to amendments of pleadings are instructive.

7. In *Eastern Bakery v Castelino* [1958] EA 461, the Court of Appeal for Eastern Africa held:

“Amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs.”

8. Similarly, in *Joseph Ochieng & 2 Others t/a Aquiline Agencies v First National Bank of Chicago* [1995] KECA 31 (KLR), the Court of Appeal emphasized the necessity of allowing amendments that facilitate the determination of the real issues in controversy.

9. Further, the Court in *Institute for Social Accountability & Another v Parliament of Kenya & 3 Others* [2014] eKLR reiterated that:

“A court of law should not shirk from allowing an amendment that is necessary to bring out the real issues in controversy between the parties, unless it would cause prejudice or injustice to the other party.”

10. Applying these principles to the present case, it is evident that the amendments sought are directed at regularising the Appellant’s representation and introducing substantive reliefs arising from the ruling delivered on 28th January 2025. The Respondent has not demonstrated any specific or irreparable prejudice that would result from the amendment, nor shown that such prejudice, if any, cannot be adequately addressed by an award of costs.

11. I have considered the objection concerning the propriety of the firm of Rashid Ngaira & Associates coming on record and I find that it is a matter that can be addressed substantively during the hearing of the proposed amended application. It does not, in itself, constitute a valid ground for denying leave to amend.



12. Additionally, the 1st Respondent's assertion that the amendment seeks to prematurely determine the appeal is speculative for the Court retains full discretion to consider and determine the merits of the amended application at the appropriate stage, and the mere framing of reliefs in the amendment does not amount to a predetermined outcome.

Disposition

13. In light of the foregoing, the Notice of Motion dated 05th May 2025 is allowed on the following terms:
1. The Appellant shall file and serve the amended Notice of Motion within seven (3) days from the date of this ruling.
 2. The Respondent shall have leave to file a response thereto within seven (3) days of service
 3. The Amended Notice of Motion shall be heard on 02nd June 2025
 4. Costs shall be borne by the Appellant

DELIVERED AT NAIROBI THIS 22ND DAY OF MAY, 2025.

WAMAE T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ruth

For Appellant - Mr. Ngaira for Rashid Ngaira & Associates

For 1st Respondent - Ms. Nkatha for Mwaniki Gachoka & Co. Advocates

For 2nd Respondent - N/A

