



REPUBLIC OF KENYA



**Kokaiya v Kariuki & another (Civil Case E138 of 2023)
[2025] KEHC 11945 (KLR) (Civ) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 11945 (KLR)

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

**CIVIL
CIVIL CASE E138 OF 2023**

**SN MUTUKU, J
JUNE 19, 2025**

BETWEEN

SUSAN WANJIRU KOKAIYA PLAINTIFF

AND

JOSEPH MAINA KARIUKI 1ST DEFENDANT

FAIJOE TRANSPORTERS LIMITED 2ND DEFENDANT

RULING

The Application

1. Susan Wanjiru Kokaiya (hereafter the Applicant) has taken out the Notice of Motion dated 4.04.2025 (the Application) brought under Sections 1A, 1B, 3A, 63(e) and 100 of the *Civil Procedure Act* (CPA) and Order 8, Rules 3(1) and Order 51, Rule 11 of the Civil Procedure Rules (CPR) seeking leave to amend her plaint as per the draft amended plaint annexed thereto and an order to deem the draft amended plaint annexed to the Application as duly filed subject to payment of the requisite court fees.
2. The Applicant has backed the said Application with the grounds stated on the face of the Application and in the Supporting Affidavit of the Applicant that she instructed her advocates on record to institute the present suit seeking a refund of the sum of Kshs. 130,223,820/- against Joseph Maina Kariuki (hereafter the Respondent) and Fajoe Transporters Limited (formerly the 2nd Defendant) arising out of claim for alleged fraud, deception and exploitation; that upon the advice of her advocates, she has discovered that part of her claim falls within the jurisdiction of a different court and hence the instant Application.
3. The Applicant has averred that the amendments sought are necessary to clarify the real issues in controversy and to facilitate the expedient disposal of the present claim; that the amendments have been necessitated by emerging issues not previously within her knowledge and that the Respondent



will not suffer prejudice if the instant Application is allowed because the Respondent can be given corresponding leave to amend his statement of defence accordingly.

The Replying Affidavit

4. The Application is opposed through the Replying Affidavit sworn by the Respondent on th May 2025 where it was deposed, inter alia, that the application constitutes an attempt at delaying the expeditious disposal of the suit and that the same is a clear indication of the Applicant's lack of preparedness in prosecuting the suit.
5. The Respondent has stated that in addition to the present suit, the Applicant has resorted to instituting criminal proceedings against him at Ngong Law Courts, arising out of the same facts; that the Applicant has not set out the specific errors alleged to feature in the plaint and which would necessitate the amendments sought; that the proposed amendments are frivolous for the reason that the same contain untrue allegations and fail to disclose any new information that was previously not within the knowledge of the Applicant.
6. It is the Respondent's assertion that the proposed amendments will only convolute the issues in controversy further, adding that the amendments sought, if granted, will certainly cause him to suffer prejudice since the matter will continue to be delayed even further, thereby causing him to incur additional legal costs in defending the same and that he will continue to suffer further injury to his reputation resulting from the allegedly malicious claim against him.
7. He deposed that no reasonable grounds have been set out necessitating a grant of the orders sought in the instant Application should be dismissed.

Oral Submissions

8. The Application was dispensed with through oral submissions. In support of the Application, Mr. Nyachiro, counsel for the Applicant, reiterated the grounds in support of the Application and submitted that this court has discretionary power to allow a party to amend his or her pleadings at any stage of the proceedings; that the concerns being raised by the Respondent can easily be canvassed at the trial stage; that one of the issues raised originally in the plaint falls within the jurisdiction of the Environment and Land Court (ELC) and hence the need to amend the Plaint and that the proposed amendments are being sought in good faith.
9. In oppositions to the Application, Ms. Kyania, counsel for the Respondent, relied on the averments made in the Replying Affidavit and submitted that this is the second time the Applicant is purporting to amend her plaint; that the amendments sought amounts to a delaying tactic and that there are no new issues being raised in the amendments sought.
10. Ms Kyania has contended that notwithstanding this court's discretion in allowing a prayer for amendment, the present circumstances do not warrant the grant of such order and that the Application should be dismissed.
11. In a rejoinder, Mr. Nyachiro submitted that the amendments in question seek, inter alia, to remove the claim which would fall within the jurisdiction of a separate court to allow her to pursue that particular claim before the relevant court at a later date and that there is no clear prejudice demonstrated by the Respondent.



Analysis and Determination

12. I have considered the Application and the grounds advanced to support it. I have considered the Replying Affidavit in opposition to the Application and rival submissions. The prayers sought by the Applicant are clear that the Applicants seeks leave to amend the plaint, in terms of the draft amended plaint annexed to the Application.
13. The law on amendment of pleadings is well settled. Under Section 100 of the CPA, this court has the general power to amend pleadings in order to correct any defect or error in a suit at any stage of the proceedings on terms as to costs or otherwise as it may deem just and all amendments should be made for the purpose of determining the real question or issues raised by or depending on the proceedings. Further, Order 8, Rules 3 and 5 of the CPR allow amendments as shown herebelow.
14. Order 8, Rule 3 provides thus:
 - (1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.
 - (2) Where an application to the court for leave to make an amendment such as is mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such subrule if it thinks just so to do.
 - (3) An amendment to correct the name of a party may be allowed under subrule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.
...
 - (5) An amendment may be allowed under subrule (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 or 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. Order 8, Rule 5 on its part expresses that:
 - (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 judgment or order.
16. The discretion of the court to allow amendments at any stage of the proceedings under the above provisions is wide and unfettered. The purpose of the amendments contemplated is to determine the real questions or issues arising in the matter. This was the position taken in Bullen Leak and Jacobs Precedents of Pleadings, 12th Edition page 127:

“...the power to grant or refuse leave to amend a pleading is discretionary and is to be exercised so as to do what justice may require in the particular case, as to costs or otherwise. The power



may be exercised at any stage of the proceedings and accordingly amendment may be allowed before or at the trial or after trial or even after judgment or an appeal. As a general rule, however, the amendment is sought to be made, it should be allowed if it is made in good faith and if it will not do the opposite party any harm, injury or prejudice him in some way that cannot be compensated by costs or otherwise.”

17. Further, the Court of Appeal in the case of Dakianga Distributors (K) Ltd v Kenya Seed Company Limited [2015] eKLR borrowed from the above case, in the following manner:

“A useful discussion on the importance of pleadings is to be found in Bullen and Leake and Jacob’s Precedents of Pleadings, 12th Edition, London, Sweet & Maxwell (The Common Law Library No. 5) where the learned authors declare:-

“The system of pleadings operates to define and delimit with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them. It thus serves the two-fold purposes of informing each party what is the case of the opposite party which he will have to meet before and at the trial, and at the same time informing the court what are the issues between the parties which will govern the interlocutory proceedings before the trial and which the court will have to determine at the trial.”

18. The main issue is whether the Applicant herein is entitled to a grant of leave amend her pleadings in terms of the draft amended plaint on record.
19. Upon a review of the record, I have noted that the Plaint was originally filed on or about 26th July 2023 followed by the filing of a statement of defence by the Respondent sometime on or about 21st September 2023. The record shows that the Respondent previously filed a notice of Preliminary Objection dated 5th September 2023 challenging the competency of the Applicant’s claim on the basis that the 2nd Defendant is a non-existent entity and therefore incapable of being sued. The record further shows that when the parties subsequently attended court on 20th February 2024 the Applicant’s counsel stated that the Applicant had filed an amended plaint dated 16th October 2023, inter alia, omitting the name of the 2nd Defendant from the proceedings. Consequently, the preliminary objection was marked as withdrawn for having been overtaken by events, at the behest of the parties’ advocates.
20. I have noted that the intended amendments sought are aimed at curing certain errors and excluding parts of the claim that would fall outside the jurisdiction of this court and that the proposed amendments have been triggered by factors purportedly outside the prior knowledge of the Applicant.
21. A perusal of the draft further amended plaint annexed to the Application and marked “SNK 1” sets out further details on the particulars of the claim, while deleting certain paragraphs or wordings in the pleadings amends the special damages sought, by substituting the initial sum of Kshs. 130, 223,820/- with a sum of Kshs. 115,584,000/-. Further, it has not been demonstrated that the proposed amendments are actuated by malice or bad faith, or that the same would prejudice the Respondent in a manner that cannot be compensated by costs.
22. In view of the foregoing circumstances, I am satisfied that there will be prejudice suffered by the Respondent in allowing this application. Consequently, I hereby allow the Application in the following terms:



- a. Leave be and is hereby granted to the Plaintiff/Applicant to further amend her Amended Plaintiff dated 16th October 2023.
- b. The Plaintiff/Applicant shall consequently file the Further Amended Plaintiff within 14 days of this day.
- c. Upon service, the Defendant/Respondent shall be at liberty to amend his statement of defence, and to file and serve the same within 14 days thereof.
- d. Upon service, the Plaintiff/Applicant shall have corresponding leave to file a reply to the amended defence, if any, within 7 days thereof.
- e. Thereafter parties shall attend court before the DR, Hon. Kurumbu, for pre-trial proceedings before a date can be fixed for hearing.
- f. Costs of this application shall be paid to the Defendant/Respondent.

23. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 19TH JUNE 2025.

S. N. MUTUKU

JUDGE

