



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kimani v I&M Bank Limited (Civil Case E020 of 2022)  
[2025] KEHC 8766 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8766 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE E020 OF 2022  
JM NANG'EA, J  
JUNE 11, 2025**

**BETWEEN**

**BENARD GITAU KIMANI ..... PLAINTIFF**

**AND**

**I&M BANK LIMITED ..... DEFENDANT**

**RULING**

1. By a Notice of Motion dated 21<sup>st</sup> June 2024 the Plaintiff prays for leave to amend the plaint with costs of the application being in the cause. He avers in his affidavit supporting the application that the Defendant had filed its bundle of documents after the close of pleadings. Upon being served with the documents a need arose to amend the plaint to enable the court fully determine the suit, hence the application. According to the Plaintiff no prejudice would be occasioned for the Defendant as it may respond as deemed necessary to the amended plaint.
2. The Defendant put in a affidavit in reply through its employee named Dickson Kiprop Chemjor. The application is opposed as incompetent, misconceived and therefore an abuse of the court process. The Plaintiff is faulted for contending in the proposed amended plaint annexed to the application, that a Land Control Board consent was not obtained prior to charging of property subject of the case to the Defendant. According to the Defendant this contention is not made in the witness statements and bundle of documents filed.
3. The Defendant further avers inter alia that it is only the Court that can void title issued pursuant to a lender's exercise of statutory power of sale contrary to the claim in the proposed amended plaint.
4. The reliefs sought as per the draft amended plaint are also said to be tantamount to inviting the court to re-write the parties' contract. The court is therefore urged to reject the application as a fishing expedition, the Plaintiff being accused of failing to set down the long pending suit for hearing.



5. Learned Counsel for the parties filed written submissions. The Plaintiff argues that the application is merited to allow the court determine the real question in controversy between the parties as provided for by Order 8 Rule 5(1) of the Civil Procedure Rules 2010. I am referred to the judicial determination in Joseph Ochieng & 2 Others vs First National Bank of Chicago Civil Appeal No. 147 of 1991 (unreported) cited with approval in St. Patrick's Hill School Ltd. vs Bank of Africa Kenya Ltd (2018) eKLR. The principles guiding the court's discretionary power to amend pleadings are stated as follows as per the said decisions:-
  - a. The power of the Court to allow amendment is intended to determine the true substantive merits of the case.
  - b. The amendment 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 by an amendment of the Plaintiff if the Defendant would be deprived of his right to rely on the Limitation of Actions Act subject, however, to the powers of the Court to still allow an amendment notwithstanding the expiry of the current period of limitation.
6. In Harrison C. Kariuki vs Blueshield Insurance Company Ltd. (2006) eKLR also cited by the Applicant, it was counselled that amendment of pleadings should be liberally and freely permitted unless prejudice would otherwise be occasioned to the opposite party. In case of likelihood of prejudice, costs may be a remedy. This legal position is reiterated in Andrew Wabuyele Biketi vs Chinese Centre for the Promotion of Investment Development & Trade in Kenya Limited & 2 Others (2015) eKLR.
7. The Respondent's Advocates in their submissions urge that the application lacks in merit. Counsel also reiterate the guiding principle on amendment of pleadings enunciated in the case of Joseph Ochieng & Others vs First National Bank of Chicago supra.
8. It is further submitted that amendment is meant to alter pleadings for the purpose of ensuring litigation is conducted on the basis of the true state of facts which the parties really and finally intend to rely on for a more effective trial. [See the judicial decision in Institute for Social Accountability & Another vs Parliament of Kenya & 3 Others (2014) eKLR relied upon by the Respondent].
9. The Respondent further attacks the application as belated. Citing the case of Christine Matsesho vs Charles Richard Newton (2022) KEEELR C 153 (KLR), its advocates told the court that an amendment application may be declined for undue and unexplained delays, introduction of a completely new or inconsistent cause of action or if the effect of the amendment is to take away a party's accrued legal right or vested interest.
10. Having perused the rival affidavit evidence and submissions, the main issue arising for determination is whether amendment of the Plaintiff is merited on the material placed before the Court. I find no prejudice to the Respondent were the application to be allowed as costs are an adequate remedy. The proposed amendment does not change the character of the suit. Most of the arguments advanced in opposition to the application are matters that ought to be ventilated at trial. In the premises I find no valid grounds to reject the application.
11. The application is therefore allowed in the following terms:-



- a. The proposed amended plaint exhibited in the application shall be deemed as duly filed upon payment of any applicable filing fees within seven (7) days from the date hereof, in default of which the application shall automatically stand dismissed with costs.
- b. The Defendant is granted the costs of the application.

**J. M. NANG'EA, JUDGE.**

Ruling delivered virtually this 11<sup>th</sup> day of June, 2025 in the presence of:

Plaintiff's Advocate, Ms Omondi for Mr. Ikuu.

Defendant's Advocate, Absent.

Court Assistant (Jeniffer).

**J.M. NANG'EA, JUDGE.**

