



REPUBLIC OF KENYA



KENYA LAW
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**Gulbahar & another v Fidelity Security Limited & 2 others (Civil Suit
217 of 2019) [2025] KEHC 9601 (KLR) (Civ) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9601 (KLR)

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

CIVIL

CIVIL SUIT 217 OF 2019

JN MULWA, J

JULY 3, 2025

BETWEEN

BULENT GULBAHAR 1ST PLAINTIFF

PARAGON ELECTRONICS LIMITED 2ND PLAINTIFF

AND

FIDELITY SECURITY LIMITED 1ST DEFENDANT

WALTER OUOMA OPIYO 2ND DEFENDANT

DAVID WEKESA 3RD DEFENDANT

RULING

1. This ruling is in respect of the 2nd Defendants application dated 23/08/2024 in which he seeks leave of court to file a supplementary witness statement and one other witness statement in respect of one Peter Kimemia Nganga.
2. The application is premised on Section 1A, 1B and 3 and 63E of the Civil Procedure Rules (CPR) and Order 50 of the Civil Procedure Rules, and the Supporting Affidavit of their Advocate Robert Ongeri dated 23/08/2024.
3. The Applicants prayer is to be allowed to correct clerical errors in the date when they signed their witness statements from 2/03/2019 to read as 3/03/2019, which errors they say were inadvertent and not intentional.
4. The plaintiffs object to the intended corrections by the Defendants by Grounds of Opposition dated 14/10/2024. The gist of the objection is that the Supporting Affidavit is signed by a proxy who has no knowledge of the contested matter contrary to Rule 9 of the Advocates Practice Rules, and incurably



defective for failure to comply with Order 2 Rule 13 of the Civil Procedure Rules providing for closure of pleadings 14 days after service of the defence.

5. Both parties filed submissions, which the court has considered.
6. The main application is based on a typing error as stated above, the error being the dates on the witness statement shown as 2/03/2019 instead of 3/03/2019. It is as simple as that; a typographical error. The substance of the witness statements remain as they are. Only the dates will change if the court grants the prayers sought.
7. The 1st Plaintiff Mr. Gulbahar, while addressing the court on the motion on 10/02/2025 told the court that he would not object to the motion, subject to costs being awarded to them as they had filed grounds of objection and submissions.
8. In rejoinder, Mr. Onger Advocate for the Applicants submitted that all he was seeking was to correct the typographical error; hence, costs are not appropriate in the circumstances.
9. By Section 100 of the *Civil Procedure Act*, the court may at any time and on such terms as to costs, or otherwise as it may think fit, amend any defect or error in any proceedings in a suit and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.
10. In my considered view, and further guided by Provisions of Section 99 of the *Civil Procedure Act*, and the defect in the Witness Statements being only the date they were recorded, I am persuaded to allow the application as prayed in terms of prayer No. 1 and 2 thereof.
11. I have considered that the plaintiffs have no objection to the orders being sought. They urge for costs. I have perused their grounds of opposition dated 14/10/2024. I cannot say that they are responding to the Defendants application as they wonder about Order 2 Rule 13 CPR and fault the Advocate who swore the Supporting Affidavit on a matter so obvious as date terming him as a proxy, and seeking for an order striking out the motion.
12. Clearly, the plaintiff's submissions are not only misguided but also irrelevant to the issue before the court. The prayers sought by the Defendants are allowed.
13. The court is acutely aware of provisions of Section 27 of the CPA that costs follow the event. However, in this matter, I am not persuaded to grant costs to the plaintiffs for reasons I have stated above and in line to the proviso to Section 27, that for good reason, the court may depart from the said principle.
14. This matter shall be listed before the Deputy Registrar for pretrial directions on 18/08/2025.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 3RD DAY OF JULY, 2025

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JANET MULWA.

JUDGE

