



**Mohamud & 5 others v Equalization Fund Advisory Board & 4 others;
Controller of Budget (Interested Party) (Constitutional Petition
4 of 2023) [2024] KEHC 2560 (KLR) (8 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2560 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CONSTITUTIONAL PETITION 4 OF 2023
JN ONYIEGO, J
MARCH 8, 2024**

BETWEEN

**SAHAL MUGOW MOHAMUD 1ST PETITIONER
RASHID BILLOW ADAN 2ND PETITIONER
MAHFUDA HAJJI 3RD PETITIONER
MAHAT MOHAMMED 4TH PETITIONER
MAHAMED IBRAHIM HUSSEIN 5TH PETITIONER
AYUB ABDI OSMAN 6TH PETITIONER**

AND

**EQUALIZATION FUND ADVISORY BOARD 1ST RESPONDENT
NATIONAL ASSEMBLY 2ND RESPONDENT
NATIONAL SENATE 3RD RESPONDENT
COMMISSION ON REVENUE ALLOCATION 4TH RESPONDENT
ATTORNEY GENERAL 5TH RESPONDENT**

AND

CONTROLLER OF BUDGET INTERESTED PARTY

RULING

1. This ruling is in respect of an application dated 21.11.2023 seeking for orders that:



- i. The petitioner/applicant be granted leave to amend their petition dated 26.05.2023 after abandoning the application of even date for the reason that the same has been overtaken by events.
 - ii. Costs of the application be provided for.
2. The application is founded on the grounds that the applicants filed an application dated 26.05.2023 seeking the court to compel the 2nd and 3rd respondents to set aside the *Equalization Fund Appropriation Bill 2023* unless and until public participation is carried out. That however, the said *Equalization Fund Appropriation Bill 2023* was enacted into law on 30.06.2023 during the pendency of this suit. That as a result of the foregoing reasons, the applicants be granted a fair hearing and/or a chance to amend their petition to align with the current status of the Act since their application dated 26.05.2023 has been overtaken by events.
3. Despite the application being served upon the respondents, they did not bother to respond thus the same remained unopposed. It is trite that in as much as the application was unopposed, the same must be determined on its own merits. See *Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 others* (2018) eKLR.
4. The issue for determination therefore is whether the court should allow the application for amendment of the petition herein for the reason that partly, it has been overtaken by events as a result of the enactment of the *Equalization Fund Appropriation Bill 2023*.
5. The general power to amend pleadings can be derived from Section 100 of the *Civil Procedure Act*. It is trite that Parties to a suit have a right to amend their pleadings at any stage of the proceedings. However, that right is not absolute, for it is dependent upon the discretion of the court. However, this discretion should be exercised judiciously and in line with the criteria set out under Order 8 Rule 3 of the *Civil Procedure Rules*.
6. Order 8 Rule 5 of the *Civil Procedure Rules* provides as follows: -

“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 documents to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”
7. Further guidance can be drawn from Bullen and Leake & Jacob's *Precedents of Pleading*, 12th Edition, which provides as follows concerning amendment of pleadings:

“...power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); 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; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action...”
8. The respondent having failed to respond to the said application or to demonstrate any prejudice they were likely to suffer, it is my considered view that the prayer sought should be allowed so that parties can adequately address the issues in controversy without unnecessary hindrance. This is so, for the reason



that everyone deserves to have his day in court however hopeless the suit may be and that all parties have a right to be heard. [See art 50 of the *constitution*].

9. In the foregoing premises, I hereby hold that
- i. The application dated 21.11.2023 is hereby allowed.
 - ii. The applicants to file and serve their petition within a period of seven (7) days after the ruling herein.
 - iii. Costs be in the cause.

DATED, SIGNED AND DELIVERED THIS 8TH DAY OF MARCH 2024

J. N. ONYIEGO

JUDGE

