



**Africa Merchant Assurance Co. Ltd v County Secretary Migori County Government & another (Judicial Review E005 of 2021) [2024] KEHC 17019 (KLR) (7 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 17019 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
JUDICIAL REVIEW E005 OF 2021**

**RPV WENDOH, J**

**MAY 7, 2024**

**IN THE MATTER OF AN APPLICATION TO CITE AND  
PUNISH THE RESPONDENT FOR CONTEMPT OF COURT**

**AND**

**IN THE MATTER OF ENFORCEMENT OF  
COURT DECREES AND ORDERS AGAINST THE  
COUNTY GOVERNMENT OF MIGORI**

**AND**

**IN THE MATTER OF S. 5 OF THE CONTEMPT OF COURT ACT 2016**

**AND**

**IN THE MATTER OF AN APPLICATION BY AMACO INSURANCE CO. LTD**

**BETWEEN**

**AFRICA MERCHANT ASSURANCE CO. LTD ..... APPLICANT**

**AND**

**COUNTY SECRETARY MIGORI COUNTY GOVERNMENT .... 1<sup>ST</sup>  
RESPONDENT**

**CHIEF OFFICER FINANCE MIGORI COUNTY GOVERNMENT .... 2<sup>ND</sup>  
RESPONDENT**



## RULING

1. The application for determination is a Notice of Motion dated 16/11/2023 brought under the provisions of Order 51 as read with Order 8 Rule (3) (4) of the Civil Procedure Rules. The African Merchant Assurance Co. Ltd (the applicant) is seeking the following orders: -
  - i. That this court do grant leave to the applicant to amend its application for contempt of court dated 8<sup>th</sup> May 2023 and filed in court on 8<sup>th</sup> May 2023.
  - ii. That if this application for leave to amend is allowed, the annexed amended notice of motion and supporting affidavit be deemed filed upon payment of the requisite court fees.
  - iii. Costs of the application be in the cause.
2. The application is based on grounds appearing on the face thereof and the affidavit in support sworn by Kerario Marwa Counsel for the applicant dated 17/11/2023.
3. It was deposed that after filing the application, Counsel noticed that the application has both factual and clerical errors which need to be corrected before the court can determine the issues therein; that the amended notice of motion and the affidavit in support thereof are marked “KM1 & 2”; that it is in the best interest of justice that the application be allowed so that the proper issues are presented to the court for determination.
4. The application is not opposed. Mr. Kisera appearing for the respondents on 5/7/2023, sought time to file a response within 14 days which response has not been.
5. Order 8 Rule 5 (1) of the Civil Procedure Rules provides:-

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.”
6. The power to amend pleadings can be exercised by the court at any stage of the proceedings. To allow or disallow a party to amend pleadings, is an exercise of the court’s discretion. The Court of Appeal in *St Patrick’s Hill School Ltd vs Bank of Africa Kenya Ltd* (2018) eKLR set out the principles governing amendment of pleadings as follows: -
  - a) The power of the court to allow amendments is intended to determine the true substantive merits of the case.
  - b) The amendments 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 if by an amendment of the plaint the defendant would be deprived of his right to rely on limitations Act subject however to powers of the court to still allow and amendment notwithstanding the expiry of current period of limitation.”



7. I have considered the annexed proposed amendments in the application. The applicant seeks to correct the date of the mandamus order from 5<sup>th</sup> November 2021 to 30<sup>th</sup> March 2022. The applicant also seeks to correct the amount it wishes to recover from the respondents from Kshs. 2,189,921/= which had accrued interest to Kshs. 2,649,661/= being the outstanding balance at the time of filing the application. The applicant also wishes to recover costs from the respondents which were assessed on 19<sup>th</sup> November 2023 as Kshs. 83,020/= making the total amount the applicant is seeking to recover Kshs. 2,732,681/=.
8. In my view, this is a necessary amendment which will not prejudice any party since the respondents did not find it fit to file their response.
9. The application dated 16<sup>th</sup> November 2023 is merited and allowed as prayed.
10. The amended application to be deemed as properly filed upon payment of the requisite court fees if any within 7 days of this ruling. The amended application to be served upon the respondent within 3 days after filing.

It is so ordered.

**DATED, DELIVERED AND SIGNED AT MIGORI THIS 7<sup>TH</sup> DAY OF MAY, 2024.**

**R. WENDOH**

**JUDGE**

Ruling delivered in the presence of;

No appearance for the Applicant.

Mr. Nyasimi for the Respondents.

Emma & Phelix Court Assistants.

