



**Al Siddique Motors Limited v Manjewa (Civil Appeal E039 of 2023)
[2024] KEHC 9213 (KLR) (23 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9213 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E039 OF 2023
GMA DULU, J
JULY 23, 2024**

BETWEEN

AL SIDDIQUE MOTORS LIMITED APPELLANT

AND

MARY KAMENE MANJEW A RESPONDENT

(From the ruling in Civil Case No. E062 of 2020 delivered on 4th August 2023 by Hon. C. K. Kithinji (PM) at Voi Law Courts)

JUDGMENT

1. In a ruling delivered by the learned Magistrate on 4th August 2023 in Voi Magistrate’s Civil Suit No. E062 of 2020 to a Notice of Motion dated 27th March 2023, the trial court allowed an application by the plaintiffs (now respondents) for stay of proceedings, arrest of judgment and leave to amend and file further list of documents, in the following terms:-

“14. Therefore, the application is allowed. Costs in this instance will be to the defendant. The parties to take directions on how to proceed as the orders automatically reopen the case for purposes of production of the documents. Orders accordingly.”

2. Dissatisfied with the above ruling of the trial court, the appellant, who is the defendant in the trial court has come to this court on appeal through counsel Jengo & Associates Advocates, on the following grounds:-

1. There is no provision in law that allows a party to amend a pleading to introduce new evidence that was not availed at the time of the hearing..



2. The learned trial Magistrate erred in law in mixing up the issue of amendment of pleadings to introduce new allegation and an application to merely re-open a case and call new evidence.
 3. That the learned Magistrate erred in law and in fact in holding that there was evidence on record to show that the plaintiff had made attempts to obtain the alleged new evidence at the time of hearing when no such evidence was tendered.
 4. That the learned trial Magistrate erred in law and in fact took into account the wrong principles and failed to apply the correct principles in making her decision hence exercised her discretion wrongly and arrived at a decision that is on the face of it not balanced, unfair, unjust and gives one party an unfair advantage.
 5. The learned trial Magistrate disregarded the defendants submissions so as not to answer the issues that were raised and ventilated.
 6. That this is a ruling where the trial court failed to consider constitutional principles set out in Article 47, 50 and 159 of *the Constitution* of Kenya.
 7. That the learned trial Magistrate in allowing the application as prayed in essence set aside all her proceedings and ordered a trial denovo to simply enable the plaintiff to call new evidence and fill the gaps in its case.
 8. That the learned trial Magistrate erred in law and in fact and overlooked Article 159 of *the Constitution* in holding that the appellant had not shown any prejudice it would suffer when the delay itself and the stage at which the amendment was sought defeats the principles of Article 159 of *the Constitution* on delayed justice.
 9. The impugned ruling amounts to wanton and flagrant abuse, misuse, arbitrary and oppressive abuse of the discretionary powers occasioning an injustice.
3. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Jengo Associates Advocates for the appellant, as well as the submissions filed by Njoroge Mwangi & Company Advocates for the respondent. I have to acknowledge here that both sides relied upon decided court cases.
 4. I note that the prayers in the application filed by Mary Kamene Manjewa as plaintiff dated 27th March 2023 through Njoroge Mwangi & Company Advocates to which the subject ruling appealed from relates, were as follows:-
 1. (Spent).
 2. That the court be pleased to set aside the proceedings in this suit including suspending the delivery of judgment scheduled for 12.4.2023 pending the hearing and determination of the instant application.
 3. That the plaintiffs be granted leave to further amend her pleadings.
 4. That the plaintiff be granted leave to file and serve a further list of documents.
 5. That the costs of the application be in the cause.
 5. In the supporting affidavit to the application, the proposed further amended pleadings were annexed, and seeks to amend the number of the Certificate of Insurance issued by Kenya Orient Insurance Co. Ltd, and the subject motor vehicle chassis number. I see no mention of the motor vehicle number plate, though the description of the incident giving rise to the case relates to an allegation that the plaintiff was



a passenger in the said motor vehicle on the Mombasa – Nairobi road when the plaintiff was injured in a traffic accident, which is no doubt a public road or highway.

6. In arguing this appeal, the appellant’s counsel has listed two main issues for determination which are firstly, whether the Magistrate failed to grasp and address whether the filing of the application was done very late in the day and in reaction to the appellant’s submissions, and secondly, the relevance of the intended new evidence in determining the issue at hand.
7. The respondent’s counsel, on the other hand, has argued that the proposed amendment and further documents did not seek to introduce any new cause of action, and that the trial court had discretion to amend, and that the amendments and additional documents were very crucial in this case, and that the appellant will in any case have a chance to respond to the same.
8. I have considered the grounds of appeal and the submissions on both sides. The power of a trial court to amend pleadings is a discretionary power which may be exercised at any stage of proceedings. This means that before the final decision in the case is made, amendment of pleadings may be allowed by the trial court and the main purpose is for the court do justice to all parties involved in the particular circumstances of each case. That discretion is anchored under Order 8 rule 3 and 5 of the Civil Procedure as follows:-
 - 3(1) Subject to Order 1 rules 9 and 10, order 24 rules 3, 4, 5 and 6...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 pleadings.....
 - 5(1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in the proceedings, the court may either of its own motion or on the application of any party order documents to be amended in such a manner as it directs and, on such terms, as to costs or otherwise as are just.”
9. The scope of the exercise of discretionary powers by courts has been considered severally in decisions by our courts, including the case of Mbogo & Another =Versus= Shah (1968) EA 93 relied upon by counsel for the appellant, wherein it was stated by the East African Court of Appeal that the crucial consideration is to do justice to all parties involved.
10. In determining this appeal, I have perused and considered the ruling of the trial court, the application and affidavits therein filed as well as the submissions on both sides made before this court, and the particular circumstances of the case.
11. It is true that the application was filed after evidence had been tendered, by parties, case closed, submissions filed, and only the judgment was pending and date of judgment had already been fixed by the court. Thus though the proceedings before the trial court were still alive, the application was made at the tail end of those court proceedings.
12. What are the circumstances of the application? This is a matter where a motor vehicle which was driven on the public highway Mombasa – Nairobi road, was so driven without displaying its number plates, which appears to be contrary to the provisions of the *Traffic Act*, and which made it impossible for other road users and the public, including the plaintiff, to get or ascertain the identity or description of the said vehicle, except from information given by the owner of the vehicle or the police. If one of the two was cunning, then it was difficult if not impossible for anybody to get the actual information on the particulars and identity of the motor vehicle, from anybody else or any institution, including the Kenya Revenue Authority.



13. The same problem would arise in getting the identity and particulars of the insurer of the motor vehicle, and it was difficult even to know whether the said motor vehicle was insured and by which insurer.
14. In those circumstances, even outside the apparent criminality in the operation of the vehicle under the *Traffic Act*, the fault if any, regarding the correct particulars of the motor vehicle falls squarely on the owners of the vehicle and the police, for allowing the vehicle which did not have identifying marks displayed as required by the law to be driven on the public road. In my view, third parties who claim to have been affected adversely by the said motor vehicle cannot be blamed for providing wrong descriptions of the vehicle, as it was for the owner and the police to provide the correct hidden identification marks of the said motor vehicle, which responsibility or blame, cannot be passed on to others.
15. In those circumstances in my view, though the application was made obviously late in the day, the trial court was justified and correct in exercising its discretion, and did so properly and judiciously in allowing the application under our 2010 constitutional dispensation – Article 150 and 159. The trial court’s ruling was also quite clear that the effect of the ruling meant re-opening the case, so such is not an issue to be clarified by this court.
16. I thus find no merits in the appeal. I dismiss the appeal. The case before the Magistrate’s court will progress as ordered therein. The costs of this appeal will follow the substantive decision in the pending case before the Magistrate’s court.

DATED, SIGNED AND DELIVERED THIS 23RD DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

No appearance for the appellant

Mr. Kazungu for the respondent

