



**Konnexion Systems Ltd v Independent Electoral and Boundaries Commission
(IEBC) (Commercial Case 163 of 2014) [2023] KEHC 1219 (KLR)
(Commercial and Tax) (14 February 2023) (Directions)**

Neutral citation: [2023] KEHC 1219 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 163 OF 2014
DO CHEPKWONY, J
FEBRUARY 14, 2023**

BETWEEN

KONNEXION SYSTEMS LTD PLAINTIFF

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION
(IEBC) DEFENDANT**

DIRECTIONS

1. There are two applications pending in this matter to which directions on their disposal had issued on November 23, 2022. However, on February 7, 2023 when the court reconvened, the parties had not complied by filing responses and submissions.
2. However, it came out that the Plaintiff had amended the Notice of Motion application dated June 14, 2022 on the February 3, 2023 but counsel for the Defendants objected to the said amended application from being admitted on record. Mr Mutunga, also on record as counsel for the Plaintiff, pointed out that it is not in order for Mr Kihara to come up with an amended Notice of Motion application as he had done but contended that he ought to have withdrawn the previous application as an application is not a pleading to be amended.
3. According to the Defendant's counsel, a Notice of Motion is not a pleading within the definition under Order 8 of the *Civil Procedure Rules*, which provides for amendment of pleadings and not applications. He also pointed out that the said amendment has been made without leave of court, hence the same should be struck out from the record. Mr Lubullella pointed out that the court had issued directions on how to dispose of the Notice of Motion which has been amended but mischievously, Mr Kihara amended the same to bring in 2nd Plaintiff who has no locus, thus changing the prayers substantively.



4. In response, Mr Kihara has stated that the overriding objective of the administration of justice as captured under Sections 1A and 1B of the Civil Procedure Act, obligates the court and counsel to take a fast, just, proportionate, expeditious and affordable resolution of disputes and determine the same on substantive merits. He sought that the Defendants' counsel to file any objection or response to the amended Notice of Motion instead of going into the merits of the application at his stage. Mr Kihara went on to state that an application is a pleading as defined under Section 2 of the Civil Procedure Rules which defines what a pleading is. Further, he argues that whatever prejudice that will be caused to the other parties is one that can be compensated by an award of costs. He again cited Order 8 of the Civil Procedure Rules, which allows for an oral application for amendment of any pleading any time before end of trial to save on time and costs for the parties.
5. In my view, I am aligned to the same ideas as expressed in the case of Ally Mohamed & Another v Ismael Msamba Hassan & 2 Others [2021]eKLLR, that the definition under Section 2 of the Civil Procedure Rules is restrictive and only refers to a few court processes that cannot be said to be the only pleadings accepted by law. Therefore, given that a Notice of Motion is a widely used tool at interlocutory stage, and much important just as a Plaint and Originating Summons would be, I am unable to agree with the Defendant's counsel that the amendments made to the Plaintiff's Notice of Motion dated June 14, 2012 are inappropriate only because a Notice of Motion is not to be considered a pleading.
6. The court is also be well guided by the principles underpinning the overriding objectives and the call to administer justice without undue regard to procedural technicalities. Indeed a party should be allowed to make amendments as may be necessary so as to properly articulate its case provided that the amendments do not introduce new or inconsistent causes of action that no vested interest or accrued legal rights are affected, and finally that the amendment can be allowed without injustice being caused to the other side.
7. Taking cue from the above guidelines, I am of the view that the amendment on the Plaintiff's application has not affected any of the Defendants' accrued rights or may even cause injustice upon the Defendant. The amendments merely seeks the Plaintiff to be allowed to amend its Plaint and for expeditious disposal of the matter it behoves the court to allow all arising issues to be dispensed with once so as to avoid piecemeal litigation. Furthermore, it is worth noting that the other parties are yet to file their Replying Affidavits and submissions to the application dated June 14, 2012 except for Grounds of Opposition, hence pleadings cannot be said to have been closed in this case.
8. Consequently, the following orders do issue with respect to the applications pending herein:-
 - a. The Plaintiff be and is hereby granted leave to amend the Notice of Motion application dated June 14, 2012 and the amended Notice of Motion applications dated February 3, 2023 be and is hereby deemed as being duly and properly on record.
 - b. The Defendants are granted seven (7) days to file a response to the Plaintiff's amended Notice of Motion dated February 3, 2023.
 - c. In addition to the directions issued on November 23, 2022, the amended Notice of Motion and the application dated September 22, 2022 be canvassed by way of written submissions. Each party is granted seven(7) days to comply starting with the Plaintiff.
 - d. Mention on February 28, 2023, to confirm compliance and highlighting.

It is so ordered.

DIRECTIONS DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 14TH DAY OF FEBRUARY, 2023.



D O CHEPKWONY

JUDGE

In the presence of:

Mr Kihara counsel for Plaintiff/Applicant

Mr Lubulella counsel for Defendants/Respondents

Court Assistant - Sakina

