



REPUBLIC OF KENYA



**Kahio Sangyo Company Limited v Maeji Kahio International Ltd (Civil Suit E050 of 2018)
[2023] KEHC 17845 (KLR) (Commercial and Tax) (12 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E050 OF 2018
JWW MONG'ARE, J
MAY 12, 2023**

BETWEEN

KAHIO SANGYO COMPANY LIMITED PLAINTIFF

AND

MAEJI KAHIO INTERNATIONAL LTD DEFENDANT

JUDGMENT

1. By an application dated 17/6/2022 brought by the Plaintiff seeking to produce a statement of account between the parties for the following relief;
 - a. That this Honourable Court be pleased to extend the time set for filing the statement of accounts of the pleadings between the parties herein.
 - b. That the statement of accounts annexed herewith be deemed as duly filed and served.
 - c. That the Plaintiff be granted leave to amend its list of witness to include Mr. Yuki Miyagwa.
 - d. That costs of this application be provided for.
2. The Application is supported by the grounds set on its face and the supporting affidavit of Haji Katsuya sworn on 27th May 2022. The application is opposed and the Respondents filed a replying affidavit sworn by Geoffrey Musyo Musyoka on 12/7/2022.
3. The Applicant has filed the application seeking leave to introduce new evidence after the testimony of the Plaintiff's first witness has been taken. The Plaintiff has moved the court to be allowed to include a new witness testimony to explain the statement of accounts between the parties. The document being sought to be introduced was not exchanged between the parties and neither was it available during preparation stages of this trial.



4. In opposing the said application, the Respondent alleges that the Plaintiff's application is an abuse of the court process as it seeks to return the case back to the pre-trial stage when the same has commenced and the Plaintiff has testified. That this was necessitated by the cross examination it did to the evidence by the Plaintiff's witness and now what the Plaintiff is seeking is to close the gaps so identified and make its case stronger.
5. The Respondent argued that to do so will greatly prejudice their defence as the new document will fundamentally alter the case and since pleadings have long closed, the defence will not be in a position to offer evidence to rebut any new evidence so introduced at this stage in the hearing of the suit.
6. In any event, Order 3 Rule 2 of the Civil Procedure Rules is coached in mandatory terms. It is expected that all pretrial process have to be completed before a trial can commence and once the same has commenced, then the parties therein are precluded from opening the matter to introduce new documents or issues not agreed upon during pretrial.
7. I have considered the application before me, the pleadings filed and the submissions by the parties. I note that Order 3 Rule provides as follows;

“All suits filed under Rule 10 including suits against the government, except small claims, shall be accompanied by —

- (a) the affidavit referred to under Order 4 Rule 1 (2);
- (b) a list of witnesses to be called at the trial;
- (c) written statements signed by the witnesses excluding expert witnesses; and
- (d) copies of documents to be relied on at the trial including a demand letter before action:

Provided that statement under Sub Rule (c) may with leave of court be furnished at least fifteen days prior to the trial conference under Order 11.”

8. The completion of the pretrial process as envisioned under Order 11 of the Civil Procedure Rules signals the commencement of the hearing of the suit and all documents deemed to be relevant to the suit are then confirmed to have been provided and the matter certified ready for trial. In the matter before this court, a witness has testified and cross examined by the defence. This matter has therefore in my view moved beyond the stage at which new evidence can be allowed in. In any event, once the pretrial process completed, parties are precluded by operation of the law from reopening their case.
9. In light of the above, I find and hold that the application before as lacking in merit and I will dismiss it with costs to the Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF MAY 2023.

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J. W. W. MONG'ARE

JUDGE

In the Presence of:-

- 1. Mr. Mwenda for the Plaintiff/Applicant.**
- 2. Ms. Wayua holding brief for Uvyu for the Respondent.**



3. Sylvia- Court Assistant.

