



**Weston Contractors Ltd v Kenya Airports Authority (Civil Suit
3 of 2018) [2023] KEHC 17530 (KLR) (2 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17530 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT 3 OF 2018
DKN MAGARE, J
MAY 2, 2023**

BETWEEN

WESTON CONTRACTORS LTD PLAINTIFF

AND

KENYA AIRPORTS AUTHORITY DEFENDANT

RULING

1. This matter came up on 27/4/2023 for hearing. After the plaintiff was heard, an issue arose on the amounts claimed. The plaintiff sought to amend pleadings orally.
2. I deferred the Ruling to today in order to allow evidence to be taken smoothly.
3. The defendant had 2 witnesses. The matter proceeded for hearing of the 2 witnesses. I deferred re-examination to today 2/5/2023. Though there was time, I did not want the Defendant to close before commenting on the evidence.
4. Today, I will indicate to the parties that I will review this Ruling before re-examination. I note that the documents that the plaintiff relies to make the amount is already an exhibit.
5. In the case of *David Bagine vs Martin Bundi* [1997] eKLR settles what is required of special damages. The law lords posited as follows: -

“It has been held time and again by this Court that special damages must be pleaded and strictly proved. We refer to the remarks by this Court in the case of *Mariam Magbema Ali v Jackson M Nyambu t/a Sisera store*, Civil Appeal No 5 of 1990 (unreported) and *Idi Ayub Sabbani v City Council of Nairobi* (1982-88) IKAR 681 at page 684: “....special damages in addition to being pleaded, must be strictly proved as was stated by Lord Goddard CJ in *Bonham Carter vs Hyde Park Hotel Limited* [1948] 64 TLR 177 thus:



6. Plaintiffs must understand that if they bring actions for damages it is for them to prove damage, it is not enough to write down the particulars and, so to speak, throw them at the head of the court, saying, 'this is what I have lost, I ask you to give me these damages.' They have to prove it"
7. It is therefore the duty of the plaintiff to set out the particulars of special loss.
8. The two factors I need to consider are: -
 - a. The good faith Application.
 - b. Prejudice to the Defendant.
9. It was common ground that this matter had humongous amount of documents. I had to push parties to proceed, since this matter was filed way back in 2018. The issue of the amounts due arose in the course of cross-examination.
10. The Defendant conceded that application for amendment should be given freely. He must have been relying on the decision of *Lewar Ventures Limited v Equity Bank (Kenya) Limited* [2022] eKLR, held as doth: -

“While the argument of the respondent that Order 8 Rule 1 (1) is particular that amendments of pleadings may be done without leave at any time before close of pleadings is plausible, the purpose of allowing amendment of pleadings is to enable the court to determine the real issues in controversy between the parties once and for all. For the court to allow the amendment, it has to first look into the intent and purpose of the amendment and whether any prejudice will be suffered by the other party or parties in dispute and whether prejudice can be compensated by way of costs.

In *Institute For Social Accountability & another v Parliament of Kenya & 3 others* [2014] eKLR the court held:-

“The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings....The court will normally allow parties to make such amendments as may be necessary for determining the real questions in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, no new or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that the amendment can be allowed without an injustice to the other side.”

11. I am therefore satisfied on the Application is made in good faith. The Application is simply to allow pleadings with evidence. The evidence itself is on record. The same does not change the case for each party. The plaintiffs view is that the fines accounts should be basis for the claim while the Defendants view was that the bill of quantities should be the basis for payment. The nature of the cases thus remain intact. The defendant will not be prejudiced.
12. In any case costs are enough. The Application necessitated an extra hearing. The costs of Kshs 15,000/ = will survive. I therefore allow the Application for oral Amendment. However, to be able to reach completeness of record it is necessary to file an Amended plaint limited to only to the change of figures



claimed from 54,412,686.80 to 57,433,112.35 together with VAT and the resultant total. No other aspect is amenable to amendment. Consequently, I allow the Application

Determination

13. I allow the oral Application to amend the prayers and the related claim for damages from Kshs 54,412,686 to 57,433,112,35 with VAT of Ksh 10,617, 575 to 11,048, 109.98 and total claim to Ksh 80,423, 33.30 instead of Ksh 76,977,423.55 in paragraph 12 and prayer c of the plaint dated 9/12/18 only.
14. The plaintiff to file an Amended plaint within 7 days and pay costs of Kshs 15,000/= within 7 days, failing which the Amendment lapses.
15. The matter to proceed for directions on hearing, submission and judgment date.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 2ND DAY OF MAY, 2023.
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:

Mr. Wafula for the defendant

Mr. Mukile for the plaintiff

Court Assistant - Aziza

