



**Nov Downhole Eurasia Limited v Njuguna alias Njuguna  
Kirubi t/a Arera Investments (Commercial Case E314 of 2022)  
[2024] KEHC 15220 (KLR) (Commercial and Tax) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15220 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E314 OF 2022  
NW SIFUNA, J  
NOVEMBER 21, 2024**

**BETWEEN**

**NOV DOWNHOLE EURASIA LIMITED ..... PLAINTIFF**

**AND**

**ALBERT NJUGUNA ALIAS NJUGUNA KIRUBI T/A ARERA  
INVESTMENTS ..... DEFENDANT**

**RULING**

1. This ruling is on the Plaintiff's Application dated 6<sup>th</sup> August 2024. The same which is supported by the Affidavit of Isaac Mwangi (Sworn on even date) seeks to amend the plaint herein, to introduce a second Defendant. The same which is based on the grounds in it has cited Order 8 Rule 3 (3) of the Civil Procedure Rules as the enabling provision of the law.
2. The Defendant has opposed it by way of the Replying Affidavit of its Albert Njuguna, sworn on 25<sup>th</sup> September 2024. The opposition being mainly on the ground that this Application not only seeks to join a party, but is also attempting to introduce another cause of action against the proposed party.
3. Further that this Application is a scheme to salvage the suit to cover up for a mistake in the framing of the suit. Also that there is no nexus between the current cause of action herein and the proposed party. Lastly that this Application is coming so late in the suit, and after the suit has been confirmed for hearing.



## **Determination**

4. Order 8 Rule 3 (3) of the CPR is on amendment of pleadings, to correct the name of a party in the suit. It does not provide for addition of a new party. It states as follows:

“An amendment to correct the name of a party may be allowed under Sub rule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.”
5. From the facts as stated in the Supporting Affidavit and in the grounds of the Application, it is clear that the Application is not only invoking the wrong provisions of the law, but provisions that are contrary to the orders being sought.
6. The addition of a party to an existing suit is provided for by Order 1 Rule 10 and not Order 8 Rule 3 as attempted by this Application. I see no difficulty in bringing an Application under an enabling provision of the law. Clearly, Order 8 Rule 3 (3) cannot be described as an enabling provision for the prayer sought in this Application.
7. That is for the reason that, that provision as worded, is not enabling of this prayer. I similarly do not see the wisdom in a party bringing an Application under a wrong provision or under a non-enabling provision.
8. For the foregoing reasons, this Application is hereby declined and dismissed accordingly; although with no order as to costs. Let the Plaintiff bring an appropriate Application if still intent on joining another party to this suit.
9. Given that this suit had already been confirmed for hearing, if there is still need for such joinder, then the fresh Application be filed within 7 days from today.

**DATED AND DELIVERED AT NAIROBI ON THIS 21<sup>ST</sup> DAY OF NOVEMBER 2024.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

