



**Geminia Insurance Company Limited v Klaption Insurance Company Limited (Commercial Case E181 of 2020) [2024] KEHC 15604 (KLR) (Commercial and Tax) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15604 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E181 OF 2020  
PM MULWA, J  
DECEMBER 5, 2024**

**BETWEEN**

**GEMINIA INSURANCE COMPANY LIMITED ..... PLAINTIFF**

**AND**

**KLAPTON INSURANCE COMPANY LIMITED ..... DEFENDANT**

**RULING**

1. The Plaintiff filed the motion dated 8<sup>th</sup> May 2023, under Order 8 Rules 3 & 5 of the Civil Procedure Rules 2010 and Sections 1A, 1B & 3A of the *Civil Procedure Act*, seeking the following orders:
  1. That the Honourable Court be pleased to grant leave to the Plaintiff to amend its Plaintiff.
  2. That the draft Amended Plaintiff attached be deemed as properly filed and served upon payment of the requisite court fees.
  3. That the Honourable Court be pleased to grant leave to the Plaintiff to file a further witness statement and a consolidated bundle of documents.
  4. That the costs of this application be in the main cause.
2. The Application is premised on the grounds on its face and the annexed affidavit sworn by the Plaintiff's Head of Finance, Saranjit Singh Reel on 8<sup>th</sup> May 2023. The grounds are that on 19<sup>th</sup> July 2021, during the pendency of this suit, the Court issued an order in HCCC No. E061 of 2020 Geminia Insurance v Gulf African Bank & Another directing the release of funds frozen in the Plaintiff's accounts to Gulf African Bank. Following the court order, Gulf African Bank debited the Plaintiff's bank accounts with Kshs.332,879,645.83.



3. The proposed amendments are necessary to highlight the amount debited from the Plaintiff's accounts and to enable the Court to effectively and completely adjudicate and settle all questions in dispute involved in the suit. The amendments proposed also necessitate the filing of a further witness statement.
4. The Plaintiff also seeks leave to file a consolidated bundle of documents, as the Plaintiff obtained most documents upon the conclusion of HCCC No. E061 of 2020, to ease the Court's work for reference. The Plaintiff claims that no prejudice will be occasioned to the Defendant/Respondent if the Application is allowed.

### **Response**

5. The Defendant opposed the application through a replying affidavit sworn by its Advocate, Muniyiva Mbevi on 3<sup>rd</sup> October 2024. She deposed that the Plaintiff has withheld material facts that distort the case, and this lack of disclosure must be fully considered before any amendments are allowed. The Plaintiff's claim of financial exposure due to the debiting of its account is unfounded. The Plaintiff has already initiated HCCC E164 of 2024 against United Pharma (K) Limited, seeking to recover Kshs. 206,189,750.00 plus 15% interest and has already recovered Kshs. 125,810,150.00. With this significant recovery in progress, the Plaintiff's claim of financial risk is baseless, and there is no justification to amend the Plaintiff on such grounds.
6. It was also deposed that on 4<sup>th</sup> July 2024, the Plaintiff's advocate confirmed that the amounts owed are being progressively settled. Amending the Plaintiff based on changing figures is premature and unnecessary. The proposed amendments add no relevant material facts and will soon be outdated, making further changes inevitable. Amending the Plaintiff at this stage is inefficient and redundant.
7. The application was canvassed through oral submissions.

### **Analysis and determination**

8. I have considered the application, the grounds, the supporting and replying affidavits as well as the submissions. The issue for determination is whether the Plaintiff has made a case for leave to amend the Plaintiff and to file a further witness statement and a consolidated bundle of documents.
9. The Plaintiff argued that it has the right to amend its pleadings at any stage of the proceedings before judgment and that the Court should liberally allow such amendments. The Plaintiff relied on the decision in *George Gikubu Mbutia v Consolidated Bank of Kenya (Civil Appeal No. 72 of 2014)* [2016] eKLR where the Court of Appeal stated as follows:

“As regards the law, the High Court readily accepted that the court has unfettered discretion to allow amendment of pleadings, which discretion must be exercised judiciously. It accepted too as a general proposition that parties to a suit have the right to amend their pleadings at any stage of the proceedings before judgment and that courts should liberally allow such amendments. However, he also noted situations when the court will refuse to exercise its discretion to allow amendments. Such cases include where a new or inconsistent cause of action is introduced; where vested interests or accrued legal rights will be adversely affected; where prejudice or injustice which cannot be properly compensated in costs is occasioned to the other party; and where the applicant is guilty of inordinate delay.”
10. On the other hand, the Defendant argued that the proposed amendments are not necessary because the Plaintiff has already recovered Kshs. 125,810,150.00 from United Pharma (K) Limited following the



filing of HCCC No. E061 of 2020 Geminia Insurance v Gulf African Bank & Another. The Plaintiff will keep amending the pleadings to reflect the current amount which is unnecessary.

11. In response, the Plaintiff asserted that it has not sought to amend any figures but mainly seeks to amend para. 13 and 14 of the plaint; that it will only inform the Court of any amount that may have been recovered; that HCCC No. E061 of 2020 - seeking debt settlement, differs from the current suit, which relates to a reinsurance agreement. The Plaintiff stated that the allegation of non-disclosure ought to be brought in a different application.
12. The Plaint is dated 29<sup>th</sup> May 2020 and the application is dated 8<sup>th</sup> May 2023. I note that the proceedings had been stayed pending determination of HCCC No. E061 of 2020 and the parties were engaged in out of court settlement negotiations from to 20<sup>th</sup> June 2023. Therefore, I find that the application has not been brought with inordinate delay.
13. I have gone through the amended plaint and I note that the Plaintiff mainly seeks to amend the plaint through the introduction of paragraphs 13 and 14. The proposed amendments relate to the Court's order in HCCC No. E061 of 2020 Geminia Insurance v Gulf African Bank & Another directing the release of funds frozen in the Plaintiff's accounts to Gulf African Bank following which the Bank debited Kshs. 332,879,645.83 from the Plaintiff's accounts and mentioning that the Plaintiff now remains indebted to the Bank in the sum of Kshs. 41,168,532.20.
14. From the foregoing, there is no new or inconsistent cause of action which is introduced by the amendments. I am not convinced that the Defendant will suffer prejudice as it will have an opportunity to respond to the amendments.
15. In the upshot, the Plaintiff's application dated 8<sup>th</sup> May 2023 is allowed in the following terms:
  - i. Leave be and is hereby granted to the Plaintiff to amend its plaint.
  - ii. The draft Amended Plaint attached to the Application be deemed as properly filed and served upon payment of the requisite court fees.
  - iii. Leave is granted to the Plaintiff to file a further witness statement and a consolidated bundle of documents.
  - iv. The Defendant to file a defence in response to the Amended Plaint within seven (7) days from the date of this Ruling.
  - v. Costs of the application to be in the main cause.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 5<sup>TH</sup> DAY OF DECEMBER 2024.**

**P.M. MULWA**

**JUDGE**

In the presence of:

N/A for Plaintiff/Applicant

Ms. Munyiva for Defendant/Respondent

Court Assistant: Carlos

