



**Shah v Kenya Canvas Limited & another (Civil Suit E252 of 2022)  
[2024] KEHC 15802 (KLR) (Commercial and Tax) (13 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15802 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E252 OF 2022  
FG MUGAMBI, J  
DECEMBER 13, 2024**

**BETWEEN**

**MAHESH MEGHJI SHAH ..... PLAINTIFF**

**AND**

**KENYA CANVAS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**JAYANTILAL MEGHJI SHAH ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**Introduction and Background**

1. The plaintiff filed the Notice of Motion dated 21<sup>st</sup> June 2024, under Order 8 Rules 3 & 5 seeking leave to amend the Plaint dated 29<sup>th</sup> June, 2022. The application is supported by the annexed affidavit sworn by MAHESH MEGHJI SHAH on 21<sup>st</sup> June 2024 and written submissions dated 6<sup>th</sup> August 2024.
2. According to the plaintiff, the application is premised on the need to address inadvertent omissions for the sake of clarity. He contends that the proposed amendment is necessary in order to determine the real issues in controversy between the parties and enable the court to adjudicate the matter justly and conclusively.
3. The plaintiff also contends that the present application has been filed on bona fide grounds and no prejudice will be caused to the defendants if the application is allowed. On the contrary, he argues that if the application is denied, it is the plaintiff who will suffer significant loss and hardship, thereby facing grave injustice.



## Response

4. The defendants opposed the application through a notice of preliminary objection (PO) dated 25<sup>th</sup> July 2024, grounds of opposition dated 9<sup>th</sup> October 2024 and written submissions of the same date. Their key arguments are that the plaintiff filed the present application more than a year after the pleadings were closed on 5<sup>th</sup> June, 2023, and 14 days after the plaintiff had served his reply to the 1<sup>st</sup> defendant's Statement of Defence dated 15<sup>th</sup> May, 2023, upon the defendants, on 22<sup>nd</sup> May, 2023.
5. The defendants further contend that the plaintiff has not explained the delay and that the application violates the principle that courts will not permit an amendment that is inconsistent with original pleadings and entirely alters the nature of the defence or plaint. Additionally, the defendants argue that the amended plaint fails to set out a legally valid claim and departs from the original pleadings.
6. To demonstrate this, the defendants contend that in the proposed Amended Plaint, the plaintiff abandoned all his initial prayers. These have been replaced with new prayers, seeking relief that significantly alters the entire claim. They further contend that the parties to the suit and their alleged liabilities have been drastically changed, introducing a new cause of action. The defendants assert that the amendment is intended to assist the plaintiff, a negligent pleader, in defeating an accrued defence and counterclaim. If allowed, they argue, it will undermine both the defence and the counterclaim.

## Analysis and Determination

7. I have carefully considered the pleadings, responses and the parties' respective submissions and authorities. The issues for determination are whether the PO is merited and whether the plaintiff has made a case for leave to amend the Plaint.
8. The basis of the PO is that the application contravenes Order 8 Rule 1(1) and Order 2 Rule 13 of the Civil Procedure Rules, which provide as follows:

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- (1) A party may, without the leave of the court, amend any of his pleadings once at any time before the pleadings are closed.
- 2 (13) The pleadings in a suit shall be closed fourteen days after service of the reply or defence to counterclaim, or, if neither is served, fourteen days after service of the defence, notwithstanding that any order or request for particulars has been made but not complied with.”

9. It is undisputed that the pleadings are closed. Order 8 Rule 1(1) permits a party to amend pleadings without leave of the court only if this is done before the close of pleadings. Once pleadings are closed, leave of the court is required for any amendment. In the present application, the plaintiff seeks leave to amend the Plaint after the close of pleadings, meaning he has not amended the Plaint without leave, as contemplated under Order 8 Rule 1(1). Therefore, the two objections raised in the PO lack merit and fail.
10. The defendants further assert that the application is incurably defective, misconceived and hinged on the wrong principles of law and procedure. From the face of it, the application is made under Article 159 of *the Constitution*, Sections 3A and 100 of the *Civil Procedure Act* and Order 8 Rules 3 & 5 as well as Order 51 Rule 1 of the Civil Procedure Rules (2010).



11. Article 159 of *the Constitution* affirms the judicial authority vested in courts. Section 3A preserves the court's inherent powers, while Section 100 provides for the court's general authority to amend pleadings so as to resolve the real issues in dispute. Order 8 Rules 3 & 5 of the Civil Procedure Rules addresses amendments to pleadings with leave of the court and the court's general power to amend pleadings.
12. Together, these provisions are relevant and applicable to the present application. As such, the objection that the application is incurably defective, misconceived and hinged on the wrong principles of law and procedure also fails.
13. In order to determine the final limb of the application, I turn to Order 8 Rule 3 of the Civil Procedure Rules, which provides as follows:

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  - “(1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.
  - (2) Where an application to the court for leave to make an amendment such as is mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such subrule if it thinks just so to do.
  - (3) ...
  - (4) ...
  - (5) An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.”

(emphasis mine)
14. The essence of the above provisions is that the court has broad discretion to grant leave to amend pleadings. This discretion extends even to amendments that introduce a new cause of action, provided the new cause of action is based on the same or substantially similar facts.
15. In *St Patrick's Hill School Limited V Bank of Africa Kenya Limited* [2018] KEHC 2539 (KLR), the court cited from the decision in *Simonian V Johar*, (1962) EA.336 (K). In this (latter) case the court approved amendments to a plaint which raised new causes of action 'because they were not of a different character from or foreign to or inconsistent with the original cause of action but stemmed from the same transaction'.



16. In the St Patricks Hill school case [supra], the court went on to cite from the decision in Ochieng and Others V First National Bank of Chicago, [\*CA No. 147 of 1991\*](#) where the Court of Appeal set out the principles under which Courts may grant leave to amend the pleadings as follows:
- “(a) the power of the court to allow amendments is intended to determine the true substantive merits of the case;
  - b. the amendments should be timeously applied for;
  - c. power to amend can be exercised by the court at any stage of the proceedings;
  - d. that as a general rule however late the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side;
  - e. the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on limitations Act subject however to powers of the court to still allow and amendment notwithstanding the expiry of current period of limitation.”
17. Turning back to the application before me, I have reviewed the original Plaintiff. The plaintiff sought a declaration that he is a shareholder in the 1<sup>st</sup> defendant company along with an order directing the Registrar of Companies to rectify the register by registering him as the owner of 13,143 shares.
18. In the draft Amended Plaintiff, the plaintiff proposes to introduce his claims against the 2<sup>nd</sup> defendant and five (5) new reliefs in place of the reliefs sought in the original Plaintiff. These include a declaration that the 2<sup>nd</sup> defendant holds 2,428 shares in the 1<sup>st</sup> defendant on behalf of and as a nominee of the plaintiff; that the 2<sup>nd</sup> defendant be ordered to execute transfer of share documents in respect of those shares; that the 1<sup>st</sup> defendant and the Registrar of Companies be ordered to register the plaintiff as the owner of those shares and the 2<sup>nd</sup> defendant be ordered to pay the plaintiff all dividends received from 2010 when he became a nominee to the date of judgment.
19. Having reviewed the proposed amendments, it is my considered view that, although the plaintiff seeks to introduce new claims against the defendants, these claims are necessary to effectively determine the real issues in controversy between the parties. I also observe that the claims and reliefs sought to be introduced stem from the same background and arise from the same cause of action, specifically regarding the shareholding in the 1<sup>st</sup> defendant company. Therefore, the claims are neither foreign to nor inconsistent with the original cause of action.
20. Moreover, the defendants will not suffer any prejudice, as the facts and details of the cause of action are already within their knowledge, and they will have an opportunity to respond adequately to the amended claims.
21. Consequently, I find that the Preliminary Objection is without merit, while the plaintiff's application is successful.

## **Disposition**

22. In conclusion, I make the following orders:
- i. The Preliminary Objection dated 25<sup>th</sup> July 2024 is dismissed;
  - ii. The plaintiff's application dated 21<sup>st</sup> June 2024 is allowed;



- iii. The annexed draft of the amended Plaintiff shall be deemed duly filed upon payment of the requisite fees, within 7 days of this ruling;
- iv. The defendants shall file their amended statements of defence in response to the amended Plaintiff within fourteen (14) days of service with the amended Plaintiff; and
- v. Costs to be in the cause.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 13<sup>TH</sup> DAY OF DECEMBER 2024.**

**F. MUGAMBI**

**JUDGE**

