



REPUBLIC OF KENYA



**KENYA LAW**  
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**GKW v RNK (Civil Appeal 605 of 2019)  
[2025] KECA 1475 (KLR) (12 September 2025) (Judgment)**

Neutral citation: [2025] KECA 1475 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 605 OF 2019  
DK MUSINGA, M NGUGI & F TUIYOTT, JJA  
SEPTEMBER 12, 2025**

**BETWEEN**

**GKW ..... APPELLANT**

**AND**

**RNK ..... RESPONDENT**

*(Being an appeal from the ruling and order of the High Court at Nairobi  
(Ougo, J.) dated 5th February, 2017 in HCCC No. 39 of 2011(O.S))*

**JUDGMENT**

1. The appellant and the respondent in this appeal are former husband and wife, now engaged in a dispute over division of matrimonial property. In its ruling dated 5<sup>th</sup> February 2017, the trial court (Ougo, J.) allowed an application dated 8<sup>th</sup> January 2016 by the respondent, RNW. In the said application, the respondent sought leave to amend her Originating Summons seeking division of matrimonial property between her and the appellant to include limited liability companies as respondents in the Originating Summons, initially filed against the appellant, GKW, only.
2. In its ruling impugned in this appeal, the trial court considered the respondent's application dated 8<sup>th</sup> January 2016 in which, it would appear, she sought to join two companies, [particulars withheld] Limited and [particulars withheld] Holdings Limited, as respondents alongside the appellant before us. We say 'it would appear' as the application dated 8<sup>th</sup> January 2016 and the draft Amended Originating Summons the subject of the ruling have not been included in the Record of Appeal, nor did we find a Supplementary Record placing them before us. In allowing the respondent's application, the trial court held that failing to grant the respondent leave to amend her Originating Summons would not bring to court the real issues for determination. The court directed that the amended Originating Summons be filed within 30 days of the ruling, and granted the appellant liberty to file an amended reply within 21 days of service.



3. Aggrieved by the ruling, the appellant filed the present appeal in which he raises five grounds of appeal in the Memorandum of Appeal dated 5<sup>th</sup> December 2019 which we reproduce hereunder verbatim:
  1. That the Learned Judge misapprehended the nature of the suit before her.
  2. That the Learned Judge misunderstood the nature of the procedure applicable to only husbands and wives under section 17 of the Married Women's Property Act, 1882.
  3. That the Learned Judge erred in not holding that the summary procedure under Section 17 of the Married Women's Property Act, 1882 does not apply to persons, legal or natural, other than the spouses.
  4. That the Learned Judge erred in allowing the Respondent's Notice of Motion dated 2<sup>nd</sup> October, 2015 for leave to amend the originating summons to include [particulars withheld] Limited, Commodities & Commodities Limited, Veolia Limited, Brighton Supplies Limited, and Jet Builders.
  5. That the Learned Judge's exercise of discretion to allow an amendment after the Respondent alone testified, was cross examined, re-examined and closed her case, the Appellant testified, was cross examined by the Respondent and re-examination by his counsel had commenced, was plainly wrong.
  6. That the Learned Judge erred in allowing the application under circumstances under which the Appellant had to be injured.
4. The appellant seeks the following orders from this Court:
  - a. That the Appeal be allowed with costs.
  - b. That the order of the High Court, made on 5<sup>th</sup> February, 2017, allowing the application for amendment dated 2<sup>nd</sup> October, 2015, be set aside and there be substituted an order dismissing the Respondent's notice of motion dated 2<sup>nd</sup> October, 2015.
  - c. That the suit do proceed for further hearing before a judge other than Hon. Lady Justice Ougo.
  - d. THAT such order as this Honourable Court deems fit to make in the circumstances of this appeal. (Sic) (Underlining ours).
5. In his record of appeal, the appellant has included the application dated 2<sup>nd</sup> October 2015 and the notice withdrawing it dated 12<sup>th</sup> October 2015. It would appear that in preparing the memorandum of appeal and submissions, the appellant (or his counsel) did not adequately address his mind to what was before the trial court, and what he was appealing against. In fairness, though, we should add that counsel for the respondent did not also notice the appellant's error, for she, too addressed her submissions to the application dated 2<sup>nd</sup> October 2015.
6. Notwithstanding this error, however, the appellant's grievance relates to the decision of the trial court dated 2<sup>nd</sup> February 2017 allowing the respondent to amend her Originating Summons to include two companies, [particulars withheld] Kenya Limited and [particulars withheld] Holdings Limited as the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

The essence of the appeal, then, and what we shall address our minds to notwithstanding the appellant's error, is the question whether the trial court erred in allowing amendment of the Originating Summons.



7. The appeal came up for hearing before us on 25<sup>th</sup> February 2025. The appellant was represented by Senior Counsel, Dr. Gibson Kamau Kuria, while the respondent was represented by learned counsel, Ms. Ndirangu. Dr. Kuria highlighted the appellant's submissions dated 10<sup>th</sup> August 2020. In these submissions, the appellant contended that this Court should interfere with the exercise of discretion by the trial court as, in allowing the amendment of the Originating Summons, it misdirected itself in allowing the joinder of parties other than spouses in a suit instituted under section 17 of the Married Women's Property Act; in allowing amendments which purport to bestow upon the Court jurisdiction to transfer legal title to properties owned by a company to a spouse in proceedings under section 17 of the said Act; failed to take into account matters that it should have taken into account, such as the fact that the application was brought five years after the suit was filed, no reasonable explanation for the delay was given, and that a similar application had been made a year earlier and withdrawn; that the respondent had failed to explain when the information supporting the amendments had come to her knowledge, despite having possession of relevant company documents since 2011 and 2012; and that the amendment has the effect of retrying the entire suit, which was about to be concluded, as it joined several companies at the end of the trial; that the trial court had misdirected itself both procedurally and substantively in dealing with a dispute between spouses over property acquired during marriage; and that this Court is empowered to interfere with the trial court's exercise of discretion in allowing the respondent to amend her Originating Summons.
8. According to the appellant, the amendments altered the character of the suit and would cause prejudice by necessitating a fresh hearing to accord new parties a fair trial, thereby undermining the appellant's expectation of concluding his case and receiving judgment. The appellant submitted that such amendments were only permissible after the close of a defendant's case where there was a genuine drafting error and no element of surprise. In support of his submission that this Court has jurisdiction to interfere with the trial court's exercise of discretion, the appellant cited the case of *United India Insurance Co. Ltd v East African Underwriters (Kenya) Ltd* [1985] EA 898 in which this Court set out the factors to be considered in circumstances such as this.
9. The appellant also contended that the trial court erred in lifting the corporate veil of the companies joined as parties to the suit without any pleadings or proof of fraud, sham, or misuse of the corporate structure. It was submitted that a company could not properly be joined to a suit between spouses, citing in support the case of *Housing Finance Company of Kenya Limited v Faith W. Kimeriah & Another* [1998] KECA 84 (KLR) (the Housing Finance case).
10. In his oral submissions, Dr. Kuria contended that by the impugned ruling, the respondent was allowed to add seven companies as respondents, yet the Married Women's Property Act was meant to apply to spouses; that the respondent sought to change the character of the suit; and that the amendment went against the letter and spirit of the Married Women's Property Act.
11. Counsel submitted further that some of the companies among the seven have different shareholders from the appellant and the respondent; that the respondent's contention in the Originating Summons was that she wanted to have 50% of the shares registered in the name of her former husband, and, secondly half of all the properties which are registered in companies which are not made parties; that the only option which the respondent had, but did not take, was to withdraw her Originating Summons and file a fresh suit, so that the right to a fair hearing of all the parties would be respected. We observe here that the reference to seven companies appears to have resulted from the erroneous assumption that the trial court allowed the joinder of seven companies as sought in the withdrawn application dated 2<sup>nd</sup> October 2015 and not, as is apparent from the ruling, two companies as would appear to have been sought in the application dated 8<sup>th</sup> January 2016, the subject of the impugned ruling.



12. In her submissions dated 8<sup>th</sup> July 2024 which were highlighted by her learned counsel, Ms. Ndirangu, the respondent argued that pleadings can be amended at any stage of the proceedings for purposes of bringing into the case the real issues in controversy between the parties; that the companies sought to be included in the proceedings by way of amendment, referred to in the submissions as the companies set out in the application dated 2<sup>nd</sup> October 2015, were family companies in which both the respondent and the appellant, or their relatives, held shares.
13. The respondent relied on the provisions of section 17 of the Married Women’s Property Act to submit that companies can participate in suits brought under the said section. Ms. Ndirangu submitted that what distinguished this case from the Housing Finance case cited by the appellant was that Housing Finance Limited held a charge over the subject property, whereas the companies in question in this matter were intimately connected to the matrimonial relationship between the appellant and the respondent.
14. Further, that section 17 of the Married Women’s Property Act did not bar the inclusion of companies in matrimonial proceedings, citing in support the decision of this Court in PWK v JKG [2015] KECA 535 (KLR) in which the Court held that in determining matrimonial disputes involving property registered in a company, it was necessary to consider the shareholding of the spouses. By way of illustration, Ms. Ndirangu noted that the matrimonial home, in which the parties had resided for over 20 years, was registered in one such company, [particulars withheld] Holdings Limited, and that it was therefore reasonable and necessary to include the company in the proceedings.
15. Ms. Ndirangu submitted further that in any event, the companies joined in the matter were not new to the suit, having been referenced in the original pleadings, including in a prayer seeking a declaration of the respondent’s shareholding; and that the amendment merely formalized their joinder in the event orders were to be issued with regard to them.
16. Ms. Ndirangu disputed the appellant’s claim that the amendment fundamentally altered the nature of the proceedings. She submitted that the hearing had not yet closed; the companies had always been central to the dispute; and the amendment was essential for clarity and justice, allowing all parties, including the companies, a fair opportunity to respond. It was the respondent’s case therefore that the trial court properly exercised discretion in allowing amendment to include the companies, and she urged this Court to dismiss the appeal with costs.
17. This is an interlocutory appeal in which the appellant impugns the decision of the trial court allowing an application by the respondent to amend her Originating Summons to include companies in which she alleges she had a share as part of matrimonial property. Whether or not to allow an amendment of pleadings requires the exercise of discretion by the trial court, and as is now well settled, an appellate court will only interfere with the exercise of discretion only in the circumstances enunciated by this Court in Mbogo & Another v Shah [1968] EA 98:

“....a Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been misjustice.”



18. In *United India Insurance Co Ltd & 2 Others v East African Underwriters (Kenya) Ltd* (supra) cited by the appellant, Madan, JA. expounded on the circumstances under which this Court will interfere with the exercise of discretion by the trial court, stating as follows:

“The Court of Appeal will not interfere with a discretionary decision of the Judge appealed from simply on the ground that its members, if sitting at first instance, would or might have given different weight to that given by the Judge to the va[particulars withheld]us factors in the case. The Court of Appeal is only entitled to interfere if one or more of the following matters are established: first, that the Judge misdirected himself in law; secondly, that he misapprehended the facts; thirdly, that he took account of considerations of which he should not have taken account; fourthly, that he failed to take account of considerations of which he should have taken account, or fifthly, that his decision, albeit a discretionary one, is plainly wrong.”

See also *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR).

19. In determining whether the trial court properly exercised its discretion in allowing the amendments sought by the respondent, we consider the principles to be taken into account in such circumstances. These principles were summarized in the decision of this Court in *Trishcon Construction Company v Landmark Holdings Ltd* [2016] eKLR in which the Court set out the following principles with respect to amendment of pleadings:

“The principles upon which an application for amendment of pleadings is to be considered, according to the authorities cited to us by learned counsel for the appellant, and according to section 100 of the [Civil Procedure Act](#) and order 8 of the Civil Procedure Rules, are too well-known but may nonetheless be summarized as follows;

- i. generally, an appellate court will not interfere with the exercise of discretion by a judge in allowing or disallowing an application for amendment of pleadings, unless it appears to the appellate court that in reaching the decision the judge proceeded upon a wrong principle;
- ii. amendments sought before the hearing should be freely allowed if they can be made without occasioning injustice to the other side;
- iii. the purpose for amendment of pleadings is to ensure that the real matters in controversy between litigating parties are determined together in order to avoid multiplicity of suits;
- iv. amendments should be timeously applied for;
- v. power to amend can be exercised by the court at any stage of the proceedings (including appeal stages);
- vi. as a general rule, however late the amendment is sought to be made, it should be allowed if made in good faith and provided costs can compensate the other side;
- vii. the exact nature of proposed amendment sought ought to be formulated and be submitted to the other side and the court;
- viii. if the court is not satisfied as to the truth and substantiality of the proposed amendment, it ought to be disallowed;
- ix. ...;



- x. ...;
  - xi. if the proposed amendments introduce a new case or new ground of defence, it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action;
  - xii. 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 Limitation of Actions Act but subject however to the power of the court to still allow such an amendment notwithstanding the expiry of current pe[particulars withheld]d of limitation;
  - xiii. the court has power to allow an amendment adding or substituting a new cause of action if the same 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 action by the party applying for leave to amendment.”
20. In the matter before us, the respondent sought to amend her Originating Summons to include companies in whose names she alleged property acquired during the subsistence of her marriage to the appellant were registered. The appellant unsuccessfully opposed the application, arguing, among other things, that to allow the application would change the nature of the case, would delay its conclusion and would result, wrongly, in piercing the corporate veil in respect of the said companies.
21. In allowing the application, the trial court considered the provisions of Order 8 rule 5 which give the court discretion, either on its own motion or on the application of a party, to order the amendment of pleadings for the purpose of determining the real question in controversy between the parties on such terms as to costs as it deems just. The court further noted that, as was held in the case of *Central Kenya Limited v Trust Bank Limited* [2000]2 EA 365, mere delay is not a ground for declining to grant leave, and the policy of the court is that amendments to pleadings should be freely allowed unless prejudice or injustice, which cannot be properly compensated in costs, would be occasioned to the opposite party.
22. The trial court also relied on the case of *Andy Forwarders Limited and another v PriceWaterhouse Coopers Limited and Another* [2012] eKLR for the proposition that a person may be joined to a suit, not because there is a cause of action against him, but because that person’s presence is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the matter. The trial court concluded that failing to grant the applicant, the respondent before us, leave to amend her Originating Summons would not bring before the court the real issues for determination; and further, taking into consideration the interests of justice, it would be more prejudicial to the respondent than to the appellant to decline to grant the application for amendment.
23. Having considered the ruling of the trial court and the submissions of the parties, we find no basis for interfering with the trial court’s exercise of discretion. The position of our law, as the authorities we have noted above and those relied on by the trial court illustrate, is that amendments may be allowed to bring before the court the real issue or controversy between the parties; that mere delay is not a sufficient basis for denying an application for amendment; and that limited liability companies, as was sought in this case, can be joined as parties in a suit relating to matrimonial properties between spouses- see *Muthembwa v Muthembwa* [2002] 1 EA 186; *PWK v JKG* [2015] eKLR and *Lacheka Lubricants Ltd & Another v Chanandin & 4 Others* [2023] KECA 1359. In this latter case, this Court stated:
- “In *PWK v JKG* (supra) this Court ...departed from the previous interpretation of *Muthembwa v Muthembwa* (supra) and the holding of the court in *SNK v MNK* (supra) that a trial court has no jurisdiction under section 17 of the MWP Act to distribute



properties registered in the name of the company in which the spouses are the shareholders, due to the company's separate legal personality. This is how the court reasoned: "With respect, we are not ourselves persuaded that Muthembwa v Muthembwa was to exactly that effect. Quite the opposite. The court there held, and we respectfully agree, that where the property of the company had been mixed with the matrimonial property, Section 17 allowed the court to deal with the parties' respective interests in the company as injustice might otherwise result, which, to our way of thinking, is a repudiation, in appropriate cases, of the sometimes-unhelpful distinction between the parties as spouses as opposed to shareholders for purposes of section 17 proceedings.

The Court in Muthembwa v Muthembwa found that section 17 of the MWPA did, in fact, allow a court to deal with the parties' respective interests in a company in which they are shareholders. We agree with that court's conclusion."

24. This Court in Lacheke Lubricants Ltd & Another v Chanandin & 4 Others (supra) went on to state:

"41. We are totally in agreement with the reasoning of the Court in PWK v JKG (supra). It would be totally unjust and unfair to deny the court jurisdiction to deal with a dispute involving distribution of matrimonial property, where the ownership of the claimed property is obfuscated through transfer of the property to a company which is either wholly controlled by the husband and wife as sole directors and shareholders, or by the husband as the main shareholder. In such situations, the corporate legal personality of the company is either obscured or deliberately ignored by the couple during coverture, and this requires the court to go behind the corporate veil to determine the actual beneficial ownership of the property. As stated in Muthembwa v Muthembwa (supra), section 17 of the Married Women's Property Act gives the court wide powers to inquire into the company and the issue of ownership of the property and to make orders as the justice of the case may demand." (Emphasis added)

25. In view of the jurisprudence that has emerged from this Court as set out above, we are satisfied that the trial court did, contrary to the appellant's assertions, properly exercise discretion in allowing the respondent's application for amendment dated 8<sup>th</sup> January 2016. The appellant's appeal is accordingly devoid of merit, and it is hereby dismissed with costs to the respondent.

**DATED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**D. K. MUSINGA (PRESIDENT)**

**JUDGE OF APPEAL**

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**MUMBI NGUGI**

**JUDGE OF APPEAL**

.....

**F. TUIYOTT**

**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed



**DEPUTY REGISTRAR.**

