



REPUBLIC OF KENYA



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**Britam General Insurance Company Limited v Tawaman Holdings Limited & another
(Civil Case E004 of 2023) [2025] KEHC 14194 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14194 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CIVIL CASE E004 OF 2023
AK NDUNG’U, J
OCTOBER 9, 2025**

BETWEEN

BRITAM GENERAL INSURANCE COMPANY LIMITED PLAINTIFF

AND

TAWAMAN HOLDINGS LIMITED 1ST DEFENDANT

**SIMON MURIUKI KURIA & PETER NJERU KURIA (SUING AS PERSONAL
REPRESENTATIVES OF THE ESTATE OF ENJIDIOH GITARI KURIA
(DECEASED) 2ND DEFENDANT**

RULING

1. This ruling resolves the notice of motion application dated 04/04/2025 by the 1st Defendant brought under Section 1A, 1B and 3A of the *Civil procedure Act*, Order 8 Rule 3 and 5 of the Civil Procedure Rules seeking for leave to amend the statement of defence and counterclaim dated 29/11/2023.
2. The application is based on the grounds on the face thereof and is supported by an affidavit sworn by Samson Ouma Apina, Applicant’s director. He deposed that the issue of contention is that the Plaintiff failed to repair motor vehicle registration number KCZ 810T contrary to the terms of the insurance policy cover after the said motor vehicle was involved in an accident. That the Applicant averred in its defence and counterclaim that it has never defaulted in payment of requisite premiums hence the Plaintiff is obligated to honour the terms of the insurance policy. That after reviewing the defence and counterclaim, the Applicant wish to amend the defence and counterclaim to reflect a few changes to the effect of denying the admitted paragraphs that hinder the proper adjudication of this matter. That the amendment sought is necessary to effectively adjudicate all issues pertaining to the dispute between the parties and does not introduce any new cause of action or alter the nature of dispute between the parties. That the Plaintiff will not suffer any prejudice if the order sought is granted.



3. The application is opposed by the Plaintiff who filed grounds of opposition dated 15/05/2025 on grounds that the application has no merit, is incompetent, fatally defective and an abuse of the court's process. That the cause of action is breach of policy and the proposed amendment is not meant to assist this court in making a determination on the issues raised. That the application lacks merit and is an afterthought and the Applicant has not shown any sufficient cause to warrant the orders sought hence it ought to be dismissed.
4. The 2nd Defendant did not oppose the application.
5. The application was canvassed by way of written submissions. The Applicant's counsel submitted that the Plaintiff instituted this suit claiming breach of insurance policy against the Applicant. The Applicant filed a defence claiming that it was the Plaintiff who was in breach of the insurance policy and upon perusal of the defence, the Applicant realised that it had admitted entering into a TSV-Chauffeur Driven Policy in respect of motor vehicle registration number KCZ 810T under policy number 552/804/1/002719/2022/11. That the correct position is that it entered into a PSV-Chauffeur driven policy which took effect from 22/11/2022 to 21/09/2023. That it is this admission that it seeks to amend. He submitted that Order 8 of the Civil Procedure Rules allows parties to amend at any stage of pleadings in order to correct any blunder that may have been made by any party. He placed reliance on the case of *St Patrick's Hill School Ltd v Bank of Africa Kenya Ltd* 92018) eKLR among other cases where principles for amendment of pleading were set.
6. He submitted that the application is made in good faith and the Plaintiff will not suffer any prejudice since the instant suit has not been heard yet and therefore the Plaintiff will have adequate opportunity to advance its case. Further, according to cases cited, there is no injustice if the opposing party can be compensated with costs as a result of the amendment. He maintained that the Applicant erred in admitting that it entered into a TSV Chauffeur policy and it is ready to present to court evidence to show that it entered into a PSV Chauffeur policy which shows that it is indeed the Plaintiff who is in breach of the policy. He urged the court to be guided by the case of *Phillip Chemeno & another vs Augustine Kubende* where the court emphasised that blunders should not be used as a detriment to a party but they should be allowed to correct the error in order for the court to properly adjudicate on the real issues in controversy.
7. In rejoinder, counsel for the Plaintiff submitted that the Applicant has not made a case for grant of the orders sought as the proposed amendment is not necessary for determination of the issues in the suit. On the contention that the policy was a PSV-chauffeur policy, he submitted that it is just an allegation as the Applicant has attached the policy which confirms that the policy was a TSV chauffeur driven policy. That the schedule thereto indicates the insurance period, policy premiums, policy number and the policy type being TSV Chauffeur driven. That it is on the basis of this policy that the policy premiums were paid and a certificate of insurance was to be issued. That the Applicant has not produced any evidence of a PSV chauffeur driven policy since the two parties entered into a TSV driven chauffeur policy.
8. He submitted that the said amendment is not meant to assist the court in making a determination on the issues raised in the suit as the cause of action is the breach of the insurance policy. The application is prejudicial as the applicant was in breach of the insurance policy since it failed to uphold terms of transparency and good faith by giving false information to the Plaintiff before and after the accident. That having not presented any evidence of there being a TSV chauffeur driven policy, the application is made with the intention of delaying the conclusion of this matter which is prejudicial to the Plaintiff's claim. The counsel urged that the Plaintiff be granted costs considering that it have been dragged into an application that is unmerititious.



9. I have read through the application, the supporting affidavit and the grounds of opposition. I have had due regard to the learned submissions by the respective counsel on record. The Applicant seeks to amend its defence and counterclaim. The basis for seeking amendment is that the Applicant realised that it had admitted entering into a TSV-Chauffeur Driven Policy in respect of motor vehicle registration number KCZ 810T under policy number 552/804/1/002719/2022/11 whereas it had entered into a PSV-Chauffeur driven policy which took effect from 22/11/2022 to 21/09/2023. That it is this admission that it seeks to amend. He attached the said policy. The Plaintiff's case on the other hand is that the Applicant has attached the policy which confirms that the policy was a TSV chauffeur driven policy. Further, the said amendment is not meant to assist the court in making a determination on the issues raised in the suit as the cause of action is the breach of the insurance policy. The application is prejudicial as the Applicant was in breach of the insurance policy since it failed to uphold terms of transparency and the application is also meant to delay the conclusion of the matter.
10. Order 8 Rule 3 of the Civil Procedure Rules states that;
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. An amendment to correct the name of a party may be allowed under subrule (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 or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.
 4. An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under subrule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued.
 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.
11. Order 8, rule 5 stipulates that;
1. For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.
12. The Court of Appeal in WAB Hotels Ltd (In Receivership) & another v Industrial Development Bank Ltd [2020] KECA 750 (KLR) stated thus;
- “Granting or refusal of leave to amend any pleading is a discretionary power of the court. The discretion is a judicial one and like all judicial discretions should be exercised rationally



and on well settled principles. The general principles stated in *Mbogo and another v Shah* [1968] EA 93 are applicable.

Halsbury's Laws of England, 4th Edition (re-issue) Vol. 36 (1) at Paragraph 76 lays down the purpose of amendments as follows:

"...The purpose of the amendment is to facilitate the determination of the real question in controversy between the parties to any proceedings and for this purpose the court may at any stage order the amendment of any document, either on application by any party to the proceedings or of its own motion."

....Further, in *Abdul Karim Khan v Mohamed Roshan* (1965) EA.289 (C.A), the Court laid down the principle that the courts will not permit an amendment that is inconsistent with the original pleading and entirely alters the nature of the defence or plaint. A wider footage on the same issue was given in *Ochieng & Others v First National Bank of Chicago*, Civil Appeal Number 147 of 1991 where this Court clearly 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.

13. The Court of Appeal in *Jobling v Firearms Licensing Board* [2022] KECA 1170 (KLR) also stated that;

"The primary object of allowing amendment is "to obtain a proper ventilation of the dispute between the parties, to determine the real issues between them, so that justice may be done. The foregoing should be contrasted with the court's inclination to disallow the amendment if it is not made in good faith or it is done with the sole purpose of prejudicing the defendant or in cases where obvious injustice to the other party would result if the amendment is allowed....."

The court's approach in dealing with amendments has always been that an application for amendment should be allowed unless the application to amend is mala fides or it will prejudice the other party. The practical rule adopted seems to be that amendments will always be allowed unless the application to amend is mala fides or unless such amendment would cause an injustice to the other side which cannot be compensated by costs or in other words unless the parties cannot be put back for the purposes of justice in the same position as they were when the pleading which it is sought to amend was filed. The court has a discretion to grant or refuse the amendment which must be exercised judicially. The court is inclined to grant the amendment where it is made in good faith and no prejudice will be caused to the other party. The decision whether to grant or refuse an application



to amend a pleading rest in the discretion of the court. The attainment of justice between the parties is not to be obstructed by a too rigid consideration. The object of pleadings is to define the issues: and parties will be kept strictly to their pleas where any departure would cause prejudice or would prevent full enquiry. But within those limits the court has a wide discretion. The primary principle appears to be that an amendment will be allowed in order to obtain a proper ventilation of the dispute between the parties, to determine the real issues between them, so that justice may be done. The court has the greatest latitude in granting amendments, and it is very necessary that it should have. The object of the court is to do justice between the parties. The traditional approach in relation to applications for amendment of pleadings was summarized in *Cobbold v Greenwich LBC* {1999} EWCA Civ 2074 as follows: - “[amendments in general ought to be allowed so that the real dispute between the parties can be adjudicated upon provided that any prejudice to the other party or parties caused by the amendment can be compensated for in costs, and the public interest in the efficient management of justice is not significantly harmed.” In *Abdul Karim Khan v Mohamed Roshan* [1965] EA.289 (C.A) the court laid down the principle that the courts will not permit an amendment that is inconsistent with original pleading and entirely alters the nature of the defence or plaint.”

14. The main issue for consideration in this application is therefore, whether the instant application falls within the parameters set out in the above cited decisions to justify the exercise of this court’s discretion in granting leave for the amendment of the defence and counterclaim as requested.
15. The Plaintiff instituted this suit claiming breach of insurance policy against the Applicant. The Applicant filed a defence claiming that it was the Plaintiff who was in breach of the insurance policy. To that extent, it is plain and obvious that the type of the insurance policy shall be a central issue in the quest to determine whether there was breach of the said policy or not as the terms of the policy are distinct to the particular insurance policy guiding the relationship of the parties.
16. In their defence, the Applicant admitted entering into a TSV-Chauffeur Driven Policy in respect of motor vehicle registration number KCZ 810T under policy number 552/804/1/002719/2022/11. They contend that the correct position is that it entered into a PSV-Chauffeur driven policy which took effect from 22/11/2022 to 21/09/2023. That, and specifically adopting the words of the Court of Appeal in it is this admission that is sought to be amended. Guided by Order 8 of the Civil Procedure Rules and the now settled law on amendment of pleadings through the jurisprudence alluded to above, and specifically adopting the words of the Court of Appeal in *Jobling v Firearms Licensing Board* [2022] KECA 1170 (KLR), am persuaded that the primary object of allowing amendment and which is “to obtain a proper ventilation of the dispute between the parties, to determine the real issues between them, so that justice may be done” is met in the circumstances of this case.
17. I would add for good measure that had the application been made when the case had commenced into hearing, the parameters would have been different as the application would have amounted to a shifting of the goal posts when the match was on thus prejudicing the Plaintiff. In the present circumstances the Plaintiff is in a position to react to the amended defence with the proof of the facts pleaded being left to matters evidence.
18. Flowing from the foregoing, am satisfied that the application herein has met the legal threshold for the orders sought. I allow the application and make the following orders;
 1. The Defendant be and is hereby granted leave to amend the Statement of Defence and Counterclaim dated 29/11/23



2. The amended Defence and Counterclaim be filed and served within 7 days hereof.
3. The Plaintiff shall if desired file a Reply to the Amended Defence and Counterclaim within 21 days of service.
4. Costs to abide the outcome of the suit.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 9TH DAY OF OCTOBER, 2025.

A.K. NDUNG’U

JUDGE

