



**Restore and Renew Wellness Group Limited v Tradeline Express
Company Limited & another (Environment and Land Case
E129 of 2023) [2025] KEELC 6753 (KLR) (7 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6753 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E129 OF 2023
CG MBOGO, J
OCTOBER 7, 2025**

BETWEEN

RESTORE AND RENEW WELLNESS GROUP LIMITED PLAINTIFF

AND

TRADELIN EXPRESS COMPANY LIMITED 1ST DEFENDANT

PYRAMID AUCTIONEERS 2ND DEFENDANT

RULING

1. Before me is the notice of motion dated 9th July, 2025 filed by the plaintiff/applicant, and it is expressed to be brought under Order 8 Rules 3 and 5 and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders: -
 1. Spent.
 2. That the applicant be granted leave to amend its plaint dated 24th October 2023 as set out in the draft amended plaint annexed thereto.
 3. That the draft amended plaint attached to the instant application be deemed as duly filed and served upon payment of requisite court fees.
 4. That costs of this application be in the cause.
2. The application is premised on the grounds on its face. It is further supported by the affidavit of Nelly Ketura Otieno, the chief finance officer and director of the plaintiff applicant which is sworn on even date. She deposed that at paragraph 6 of the plaint dated 24th October 2023, they pleaded to the deposit and the rent payment of the months of November and December 2022 but failed to seek relief under the same. The plaintiff/applicant further deposed that the annexed draft amended plaint seeks



to introduce the relief, and the same is not foreign or inconsistent with the subsisting cause of action. It was deposed that the delay is that the former advocate handling the matter omitted to include the said amendment, and that the defendants/respondents stand to suffer no prejudice should the application be allowed.

3. The plaintiff/applicant deposed that it should not be penalized for the reason that the hearing of the case has not commenced, and that it is in the interest of justice that the amendment is allowed.
4. The application was opposed vide the replying affidavit of Njama Wambugu, the director of the 1st defendant/respondent sworn on 14th July, 2025 and on behalf of the 2nd defendant/respondent. The 1st defendant/respondent deposed that the application is an afterthought which has been overtaken by events and should be dismissed. Further, that the matter went through pre-trial where the advocates confirmed compliance and that the matter was certified for hearing. It was further deposed that the matter was fixed for hearing on 18th March, 2025 when an adjournment was sought, and the issue of amendment of the pleadings was not raised.
5. It was further deposed that the application has been overtaken by events as the chief witness had already testified and adopted the relevant documents. The 1st defendant/respondent deposed that they will be greatly prejudiced since they will be required to revert to the pretrial stage as well as considering that the chief witness has already testified. Further, that the plaintiff/applicant has approached the court with unclean hands, and full disclosure must be linked to fair presentation.
6. The application was canvassed vide written submissions. The plaintiff/applicant filed its written submissions dated 25th September 2025, where it raised one issue for determination which is whether the applicant's notice of motion for amendment of plaint has merit. On this issue, the plaintiff/applicant submitted that a clear reading of Order 1 Rule 9 and 10, Order 24 Rules 3, 4, 5 and 6 of the Civil Procedure Rules indicate that the power to amend pleadings can be exercised at any stage of the pleadings, and that the same should be allowed if made in good faith. Reliance was placed in the case of *Central Kenya Ltd v Trust Bank Ltd* [2000] 2 EA 365 (CAK).
7. The plaintiff/applicant further submitted that a mere delay is not a ground for declining to grant leave, and consideration ought to be given to the prejudice the other party will suffer which is beyond monetary compensation. Further, that while the key witness has already testified, allowing the amendment will not take the matter back to pre-trial since the prayer sought is already pleaded in the plaint, and the documents related have been adopted. The plaintiff/applicant relied on the cases of *Institute for Social Accountability & Another v Parliament of Kenya & 3 Others* [2014] eKLR, *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] eKLR, and *Isaac Kagiri Njagi v Mithamo Muchiri* [2008] KEHC 3115 (KLR).
8. In conclusion, the plaintiff/applicant submitted that denying the amendment would fetter its right to present its case fully and would hinder the court from reaching a fair and just determination of the dispute.
9. The defendants/respondents did not file their written submissions. Be that as it may, I have considered the application, the replying affidavit and the written submissions filed by the plaintiff/applicant. In my view, the issue for determination is whether this court ought to allow for amendment of the plaint at this stage.
10. Section 100 of the *Civil Procedure Act*, provides as follows:-

“The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall



be made for the purpose of determining the real question or issue raised by or depending on the proceeding”.

11. Order 8, Rules 3 and 5 of the Civil Procedure Rules, provides as follows:-

- “(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.”

12. Further, Order 8, Rule 5 of the Civil Procedure Rules provides:-

- “(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.
- (2) This rule shall not have effect in relation to a judgment or order.”

13. My reading of the above provisions shows that indeed an amendment may be allowed at any time of the suit. The court however has discretion to either allow or deny the amendment hence the need to seek leave. In making this decision, the court needs to look at all circumstances of the matter. If the amendment will greatly prejudice the other party so as to lead to an injustice, then the amendment may be disallowed. But if no injustice is going to be caused to the other party, the court may allow the amendment with necessary directions. Having said that, it is preferable that applications to amend come early in the proceedings. Late amendments are more likely to cause injustice as compared to an amendment coming before the hearing of the suit commences.

14. The plaintiff applicant in this application seeks to amend the plaint on the grounds that while they pleaded to the deposit and rent payment for the months of November and December 2022, they failed to seek a relief of the same. The plaintiff/applicant argued that the former advocate handling the matter omitted this relief while drafting the pleadings. On the other hand, the defendants/respondents contended the application on the grounds that it has been overtaken by events and for the reason that the parties went through pre-trial and this issue was not raised, and further when this matter came up for hearing sometime in March, the same issue was not raised. The defendants/respondents argued



that they will be greatly prejudiced as they will be taken back to the pre-trial stage and have the suit commence afresh.

15. The principle upon which the court exercises the discretion to allow amendment was summarized by the Eastern African Court of Appeal in the Case of Eastern Bakery v Castellino [1958] EA 461. The object and rationale behind this principle was outlined by the High Court in the case of Institute for Social Accountability and Another versus Parliament of Kenya and 3 others (2014) eKLR as follows:-

“The issue of amendment of pleadings is not novel and has been the subject of numerous court decisions, the common denominator being that as a general principle, courts will normally allow amendment of pleadings at any stage of the proceedings if it can be done without occasioning injustice or prejudice to the other party and which prejudice can be compensated by an award of costs. See generally Eastern Bakery v Castellino (1958) EA 461; Ochieng and others v First National Bank of Chicago CA Civil Appeal Number 149 of 1991, Kenyatta National Hospital v Kenya Commercial Bank Limited & Another [2003] 2EA.

The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings.”

16. While the court is alive to the fact that amendment of pleadings can be filed at any stage of the proceedings, the time of filing the instant application is suspect. The plaintiff/applicant's key witness has already testified, and being mindful of the fact that the plaintiff/applicant is yet to close its case, I am of the view that they are attempting to tie some loose ends on their pleadings. This file has been in the plaintiff/applicant's office and change of the advocate handling the matter is not reason enough to allow the application. It would have been a different issue altogether if there was a notice of change of advocates.
17. Having said that, I find it not in the interest of justice for this court to exercise discretion and allow for amendment of the plaint. The reasons advanced are an afterthought and meant to derail the trial of this case. For this reason, the notice of motion dated 9th July, 2025 lacks merit and the same is dismissed with costs to the defendants/respondents assessed at KShs.30,000/-. Further mention on 3rd December, 2025 for further directions.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 7TH DAY OF OCTOBER, 2025.

HON. MBOGO C.G.

JUDGE

07/10/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Ms. Akelo holding brief for Mr. Otieno for the Plaintiff/Applicant

Mr. Nyamagwa for the Defendant

