



**Chitugul Merchants Limited Vyas v Kapsowar Girls High School & 4 others
(Civil Case 1 of 2023) [2025] KEHC 14790 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14790 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ITEN
CIVIL CASE 1 OF 2023
JRA WANANDA, J
OCTOBER 3, 2025**

BETWEEN

CHITUGUL MERCHANTS LIMITED VYAS PLAINTIFF

AND

KAPSOWAR GIRLS HIGH SCHOOL 1ST DEFENDANT

COUNTY DIRECTOR OF EDUCATION 2ND DEFENDANT

ELGEYO MARAKWET COUNTY 3RD DEFENDANT

MINISTRY OF EDUCATION 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. The trial of this matter commenced before me on 2/12/2024 when the Plaintiff's witness, one Eliud Wahome Gitahi, testifying as PW1, led by his Counsel, Mr. Ngigi Mbugua, began and completed his evidence-in-chief. He was in the course of being cross-examined by State Counsel, Mr. Odongo, acting for the Defendants, and who was appearing virtually, when Mr. Odongo's internet connection appeared to have failed. In the circumstances, I adjourned the hearing to 15/01/2025.
2. On 15/01/2025 however, State Counsel Ms. Winnie Cheruiyot, appeared and informed the Court that she had just taken over the conduct of the Defendants' defence from Mr. Odongo who had since been transferred. On his part, Mr. Ngigi also informed the Court that he had, during the intervening period, filed an Application seeking leave to amend the Plaint. Due to this turn of events, I gave directions on the hearing of the Application before the trial could continue. This, therefore, is the Application the subject of this Ruling.
3. The Application is the Plaintiffs' Notice of Motion dated 13/01/2025 filed through Messrs Ngigi Mbugua & Co. Advocates. It seeks orders as follows:



- i. That the Plaintiff be granted leave to amend its Plaintiff dated 2nd November 2018.
 - ii. That the annexed draft amended Plaintiff be deemed as properly filed and served upon payment of the requisite filing fees
 - iii. Costs of this application be in the cause.
4. The Application is supported by the Affidavit sworn by the said Eliud Wahome Gitahi, who described himself as the Director of the Plaintiff. He deponed that the suit was filed in 2018 in the name “Chitugul Merchants Limited”, a company registered in 2016. He however that at the time when the construction contracts the subject hereof were signed, namely, 2013-2014, 2016, and 18/01/2017, between himself and the 1st Defendant, he was still trading under a Certificate of Registration issued under the Registration of Business Names Act, Cap. 499. He deponed that along the way, and during the pendency of the contract, a directive was made by the National Construction Authority (NCA) that tasks such as the one the subject of this suit could only be undertaken by companies, and not individuals trading as business names. He thus urged that the change in name from “Chitugul Merchants Limited” was informed by the said change in government policy, otherwise he remained the natural person behind the two registrations, and that it is therefore necessary that the Plaintiff be amended to reflect this reality, and to reflect the true parties to the contracts.
 5. In opposition to the Application, the Defendants filed the Grounds of Opposition dated 10/02/2025. It was averred therein that the Application is an abuse of the process as the Plaintiff is seeking to amend the Plaintiff after the matter has already been partially heard, that amendments should not be allowed where they would result in prejudice to the other party that cannot be compensated by costs, and that the Plaintiff has failed to provide a reasonable and justifiable explanation as to why the amendment was not sought earlier, as it has been brought almost 7 years later. It was also asserted that the Application offends the doctrine of finality in litigation, and will unduly delay the fair and expeditious disposal of the suit, contrary to the overriding objectives of the Civil Procedure Act and Rules. It was also pointed out that although the Application has sought leave to substitute the Plaintiff, in the attached draft, it introduces new issues including new prayers amounting to a material alteration of the Plaintiff’s case to the detriment of the Defendants. In the end, it was urged that the Application is an attempt to litigate by trial and error, which is impermissible in law.
 6. The parties then filed written Submissions. The Plaintiff’s Submissions is dated 26/03/2025 while the Defendants’ is dated 4/06/2024.
 7. The parties basically reiterated the matters already set out and supported their Submissions with authorities. The Defendants’ Counsel however submitted further that the amendment seeks to substitute the Plaintiff entity entirely and that it is not a mere typographical error, but a fundamental change of the party prosecuting the suit. She urged further that if indeed the contracting party or proper claimant was Mr. Gitahi personally, then the original suit was instituted in the name of the wrong or non-existent party. In her view therefore, the late amendment raises serious issues on competence of the original suit.

Determination

8. The sole issue that arises for determination in the Application herein is “whether the Plaintiff should be granted leave to amend the Plaintiff, and if so, in what manner and/or to what extent should such amendment be permitted”.
9. The Court’s power to allow amendment of pleadings is found in Section 100 of the Civil Procedure Act, which provides as follows:



100. General power to amend

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.

10. Order 8 Rule 3 of the Civil Procedure Rules then sets out the instances when, and the extent, to which amendments can be allowed. It stipulates 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) 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. The above principles have been analyzed and expounded in many legal authorities. For instance, the Court of Appeal, in the case of *St. Patrick's Hill School Limited v Bank of Africa Kenya Limited* [2018] KEHC 2539 (KLR), upheld and followed the principles listed in its earlier case of *Ochieng and Others -vs- First National Bank of Chicago*, Civil Appeal Number 147 of 1991, 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 an amendment notwithstanding the expiry of current period of limitation.



12. The Court of Appeal, further, in the case of George Gikubu Mbuthia –vs- Consolidated Bank of Kenya Ltd & Anor (2016) eKLR, guided 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 position, that parties to a suit have the right to amend their pleadings at any stage of the proceedings before judgment and that court 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.”

13. From both statute and case law, it is clear that amendments are generally allowed to correct errors or defects in the pleadings, or to even accommodate change in circumstances, so as to assist the Court “to determine the real question in controversy”.
14. The first observation I make in this matter, which observation the Defendants’ Counsel has also complained about, is that although the Application only seeks leave to alter or change the character or legal description of the Plaintiff, the draft attached and which the Court is being asked to adopt, includes much more amendments in the body of the Plaintiff, and which are also substantive in effect. The same, if accepted, will clearly change the manner in which the suit has, at all times, been framed, yet the hearing has already commenced. The Affidavit filed in support of the Application also confines itself to only the change in the Plaintiff’s description. This therefore means that the further amendments appearing in the body of the Plaintiff are wholly unexplained. Allowing such unexplained, but substantive amendments, after the trial of the suit has already commenced, will evidently prejudice the Defendants.
15. It is also true that the amendment sought having been brought in the year 2025, comes 7 years after the suit was filed in 2018. No explanation whatsoever has been given for this delay. This is strange since, according to the Application, the Plaintiff, initially registered as a business name, was converted and/or incorporated into a limited in a company in the year 2016, 2 years before the suit was filed in 2018. There is however no explanation why the suit was filed in the name of the company. Even then, there is also no explanation why for 7 years, the Plaintiff’s legal team did not find it necessary to apply for the amendment, until now.
16. Be that as it may, since the Plaintiff claims that it entered into the contracts herein in the business name, I am aware that denying the Plaintiff leave to amend its description may as well sound the death knell to the suit, the same having been filed in the name of the limited company. Noting that Article 159(2) (d) of *the Constitution* discourages the Courts from terminating cases at preliminary stages before the substantive hearing, and to “administer justice without undue regard to procedural technicalities”, I will grant the Plaintiff a chance to regularize the Plaintiff by only permitting partial amendment, the one only in respect to the description or character of the suing entity. Any other amendment not connected to this are rejected.

Final Orders

17. The Application dated 13/01/2025 is therefore allowed but only to the following extent:



- i. The amendment allowed to be made in the Plaint is limited strictly, and/or only in respect to change or alteration of the Plaintiff's description or legal character, from "a limited company" to a "business name", and/or only matters connected or related thereto.
- ii. Any other substantive amendment not part of (i) above is disallowed.
- iii. For avoidance of doubt therefore, the proposed amendments introduced or reflected in the draft Amended Plaint as paragraphs 7A, 10A, 11A, 12A, 13A, 14A, and in the prayer section as (a)(i) are all disallowed.
- iv. The Plaintiff shall file and serve the Amended Plaint within ten (10) days.
- v. Considering the limited nature of the amendment permitted to be effected as above, it is not expected that the Defendants will need to also necessarily amend their Statement of Defence in response, but should the Defendants deem it necessary to do so, then they are granted leave, upon being served with the Amended Plaint, to file and serve such Amended Statement of Defence also within ten (10) days thereafter.
- vi. The parties shall immediately thereafter move to set down the suit for resumption of the trial.
- vii. The Defendants are awarded the costs of the Application.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 3RD DAY OF OCTOBER 2025

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WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Mr. Ngigi Mbugua for the Plaintiff

N/A for the Defendants

Court Assistant: Brian Kimathi

