



**Karanja v Lake Naivasha Crescent Camp Ltd (Cause E042 of 2024)
[2025] KEELRC 2904 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2904 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E042 OF 2024
AN MWAURE, J
OCTOBER 24, 2025**

BETWEEN

ISAAC MAINA KARANJA CLAIMANT

AND

LAKE NAIVASHA CRESCENT CAMP LTD RESPONDENT

RULING

1. The Respondent/Applicant filed a Notice of Motion dated 23rd June 2025 under Certificate of Urgency seeking the following orders that:
 1. Spent
 2. Spent
 3. The Respondent/Applicant be granted leave to amend its Statement of Response dated 7th August 2024
 4. The Respondent/Applicant be granted leave to call a witness and file his witness statement.
 5. The Respondent be granted leave to file and serve a supplementary list of documents.
 6. The costs of the application be in the cause.
2. The application is expressed to be brought under 14(6), (9) and 10 of the Employment and Labour Relations Court (Procedure) Rules.

Respondent/Applicant's case

3. The application is supported by an affidavit sworn by Samuel Warugu Kimotho, one of the Respondent's Directors, duly authorised by the Board, dated on even date as the application.



4. The Respondent/Applicant avers that following the adjournment of the hearing on 4th June 2025, the Respondent and Co-directors discovered crucial evidence supporting their defence, including proof that the Claimant had already been paid for several items in the claim, as evidenced by bank statements.
5. The Respondent/Applicant avers that the remaining items relate to files allegedly taken by the Claimant without permission upon termination.
6. The Respondent/Applicant avers that a key witness, Joel Irungu Mwangi, is linked to the Claimant's invoices and is expected to provide vital testimony.
7. The Respondent/Applicant avers that it has annexed a list of documents (SWK1), a draft witness statement (SWK2), and a proposed amended Statement of Response (SWK3), asserting that the omission of these materials was unintentional.
8. The Respondent/Applicant avers that no prejudice will be suffered by the Claimant, who will have the opportunity to respond, and that the proposed amendments introduce no new issues.

Claimant/Respondent's case

9. In opposition to the application, the Claimant/Respondent filed a replying affidavit dated 30th June 2025, sworn by the Claimant/Respondent.
10. The Claimant/Respondent avers that the Respondent/Applicant's application is frivolous, vexatious, and an abuse of court process aimed at delaying the resolution of the claim.
11. The Claimant/Respondent contends that the Respondent/Applicant had ample time since filing its Statement of Response on 7th August 2024 to prepare its case and submit relevant documents, and that pleadings closed on 4th March 2025 as per court timelines.
12. The Claimant/Respondent avers that the proposed amendments are viewed as a last-minute attempt to introduce new defences without exceptional justification.
13. The Claimant/Respondent further avers that the intended witness, Joel Irungu Mwangi, was always available, and the documents in question, including bank statements, were not newly discovered but always within the Respondent's control.
14. The Claimant/Respondent challenges the authenticity and relevance of the late evidence, defends the lawful acquisition of his own documents, and warns that granting the application would escalate costs, disrupt proceedings, and cause undue prejudice, especially following the dismissal of the Respondent's jurisdictional objection.
15. The Claimant/Respondent urged that this Honourable court find that the application is without merit and dismiss it with costs.
16. The application was canvassed by way of written submissions.

Respondent/Applicant's written submissions

17. The Respondent/Applicant submitted that this Honourable court has discretion under Rule 14(5), (6), (9), and (10) of the Employment and Labour Relations Court (Procedure) Rules to allow amendments even after pleadings have closed, without requiring exceptional circumstances. The Respondent/Applicant emphasized that the proposed amendments, particularly paragraphs 3A and 3B, are crucial to resolving the Claimant's substantial claim of Kshs. 1,685,097/=, of which Kshs.1,225,411/= was allegedly paid in commissions.



18. The Respondent/Applicant maintained that the bank statements and testimony from the proposed witness, who was involved in processing these payments, are vital to ensuring justice and fairness. The Respondent/Applicant relied on the case of *Eastern Bakery V Castelion* [1958] EA, the court underscored that amendments before hearing should be freely allowed if no injustice is caused, and costs can remedy any inconvenience.
19. The Respondent/Applicant further submitted that denying the application would result in unjust enrichment for the Claimant and potential double payment, violating the Respondent's right to a fair hearing under Article 50(1) of *the Constitution* of Kenya.
20. The Respondent/Applicant urged this Honourable Court to allow the application as prayed.

Claimant/Respondent's written submissions

21. The Claimant/Respondent submitted that while the court holds discretionary power to allow amendments to pleadings, such discretion must be exercised judiciously and in accordance with applicable laws and procedural rules. The Claimant/Respondent emphasized that this discretion is not automatic; amendments must be timely, made in good faith, and should neither prejudice the opposing party nor cause undue delay in the proceedings.
22. The Claimant/Respondent contends that the application was filed after the closure of pleadings and just days before the hearing, without a reasonable explanation for the delay. The Claimant/Respondent argues that the proposed witness, Mr. Joel Irungu Mwangi, and the documents, such as bank statements, were always within the Respondent/Applicant's knowledge and control, making claims of recent discovery disingenuous. The late introduction of this evidence amounts to an ambush and abuse of the court process.
23. Furthermore, the Claimant/Respondent asserts that the Respondent/Applicant has not demonstrated valid grounds to justify deviation from procedural rules, and that the proposed amendments do not contribute to resolving the real issues but rather serve to distract the court from the merits of the claim.
24. The Claimant/Respondent urged this Honourable Court to dismiss the application with costs, and in the event that the application is allowed, the Respondent/Applicant should pay Kshs.50,000/= within 7 days and grant leave to amend the pleadings.

Analysis and determination

25. The court has considered the application, supporting affidavit, replying affidavit, together with the rival submissions by both counsel and holds; the issue for determination is whether the application is merited.
26. Rule 34 of the Employment and Labour Relations Court (Procedure) Rules 2024 provides as follows:

“A party may amend pleadings before service or before the close of pleadings:

Provided that after the close of pleadings, the party may only amend pleadings with the leave of the Court on oral or formal application, and the other party shall have a corresponding right to amend its pleadings.”



27. In *Pravin Bowry V John Ward & Another* [2015] KECA 215 (KLR), the Court of Appeal cited the case of *Central Kenya Ltd. V Trust Bank & 4 Others*, CA. No. 222 of 1998, where the court stated as follows:

“Hence the guiding principle in applications for leave to amend is that all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs (see, *Beoco Ltd v. Alfa Laval Co. Ltd* [1994]4 ALL ER. 464).”

28. In *Rubina Ahmed & 3 Others -V- Guardian Bank Ltd (Sued in its capacity as a successor in Title to First National Finance Bank Ltd)* [2019] KECA 847 (KLR), the Court of Appeal cited Halsbury’s *Laws of England*, 4th Ed. (re-issue), Vol. 36(1) at paragraph 76, state the following about amendments of pleadings:-

“...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. The person applying for amendment must be acting in good faith. Amendment will not be allowed at a late stage of the trial if, on analysis of it is intended for the first time thereby to advance a new ground of defence. If the amendment for which leave is asked seeks to repair an omission due to negligence or carelessness, leave to amend may be granted if the amendment can be made without injustice to the other side...”. [Emphasis added].

29. In this instant case, this Honourable Court gave the Respondent/Applicant 21 days to comply to put its pleadings in order by 4th March 2025, and the matter was slated for hearing. The reasons given by the Respondent/Applicant were that there was a discovery of crucial evidence supporting their defence, including proof that the Claimant had already been paid for several items, evidenced on the bank statement and adding a witness statement who is a crucial witness to the case.

30. The Court is of the view that it would be unjust to bar the Respondent/Applicant from presenting additional evidence, noting that the proper procedure for seeking amendment of pleadings was followed. The Court emphasized its primary duty to ensure both parties are heard and afforded a fair trial, in line with Article 50(1) of *the Constitution* which provide that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or if appropriate another independent and impartial tribunal or body.

31. The court is persuaded by the case of *Pravid Bowry -VS- John Ward & Another* (Supra) where the court stated that the guiding principle for leave to amend is that all amendments should be freely allowed and at any stage of the proceedings provided that the amendment or joinder as the case may be will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.

32. In this case the court is persuaded the applicant has met the tenets or principles laid down in granting leave to amend the pleadings.

33. In view of the foregoing, the court finds that the application is merited and gives the following orders:

- a. The Respondent/Applicant is allowed to amend its pleadings and file the necessary documents within 14 days from the delivery of this ruling.



- b. The Claimant/Respondent is at liberty to put in a response to the above (a) within 14 days of receipt of the said amended pleadings.
- c. The Respondent/Applicant is to pay throw away costs of Kshs.10,000/= to be paid within 7 days to the Claimant/Respondent.
- d. Otherwise costs of the application will be in the cause.
- e. The case will be mentioned on 24th November 2025 to confirm compliance and to give further directions.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 24TH DAY OF OCTOBER, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

