



**Royal Gardens Hospital v Ebrahim Omwenyi Ambwere Company Limited & another  
(Civil Suit 10 of 2018) [2025] KEHC 15563 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15563 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL SUIT 10 OF 2018  
AC BETT, J  
OCTOBER 31, 2025**

**BETWEEN**

**ROYAL GARDENS HOSPITAL ..... PLAINTIFF**

**AND**

**EBRAHIM OMWENYI AMBWERE COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**BG NJUGUNA T/A FEMFA AUCTIONEERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This matter is part heard. During the hearing, the Plaintiff adduced evidence of alleged loss of items valued at Ksh. 58,000,000/= which were attached and sold by the Defendants when the Defendants levied distress for rent. The Plaintiff then prayed that the court do take accounts and award him the difference that remained after the sale of the property which it maintained was sold at a throw away price. On realizing that its pleadings did not include the said prayer, the Plaintiff made an oral application for leave to amend its Plaintiff.
2. The application was vehemently opposed. The Defendants argued that the Plaintiff had previously been granted leave to file an amended plaintiff but later indicated that it had abandoned its quest to amend the Plaintiff. The Defendants further contended that the Plaintiff had been earlier directed to proceed or the suit would stand dismissed and therefore the application for leave to amend the Plaintiff at this juncture should not be allowed.
3. In rejoinder, the Plaintiff submitted that Article 50 of the Constitution provides for a fair trial and the amendment would not prejudice as it only seeks to add one prayer.



4. The general power to amend pleadings is provided under Section 100 of the [Civil Procedure Act](#) which states 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.”

5. Order 8 Rule 3 of the [Civil Procedure Rules](#) provides thus:-

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.
  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.”

6. The purpose of amendment of pleadings is to enable the courts to properly and conclusively determine the issues in contention as envisaged in Order 8 Rule 5 (1) of the [Civil Procedure Rules](#) which provides:-

“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.”

7. It is not in dispute that the Plaintiff’s prayer for leave to amend its Complaint has come in late in the day. Certainly, the Plaintiff has not been diligent in prosecuting its suit which has been pending since 2018 and which only proceeded after the court had threatened to dismiss it for want of prosecution.

8. The principles governing the amendment of pleadings were set out in *Ochieng & Others v First National Bank of Chicago* Civil Appeal No. 147 of 1991 (unreported) cited with approval in [St. Patrick’s Hill School Limited v Bank of Africa Kenya Limited](#) [2018] KEHC 2539 (KLR) when the Court of Appeal reiterated the said principles 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.”
9. Similarly, in the case of *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] KECA 345 (KLR), the Court of Appeal held thus:-
- “The law on amendment of pleading in terms of section 100 of the *Civil Procedure Act* and Order VIA rule 3 of the repealed Civil Procedure Rules under which the application was brought was summarized by this Court, quoting from Bullen and Leake & Jacob's Precedents of Pleading - 12th Edition, in the case of *Joseph Ochieng & 2 others v First National Bank of Chicago*, Civil Appeal No. 149 of 1991 as follows:-
- “The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); 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; that the proposed amendment must not be immaterial or useless or merely technical; that 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; that 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 Acts.”
10. The court has discretion to allow amendments provided the discretion is exercised judicially, and in accordance with the rules of natural justice. The guiding principles require that the amendment should not introduce a new or inconsistent cause of action, it should be made in good faith, it should be made timeously and should not prejudice the opposing party to an extent that cannot be compensated by costs.
11. At the inception of the suit, the Plaintiff was challenging a distress attachment and intended sale of its goods after the Defendants levied distress for rent. It therefore sought an order of accounts from the 1<sup>st</sup> Defendant in regard to the alleged rent arrears, and an injunction to restrain the Defendants from proceeding to sell its distressed goods by way of public auction. During the hearing, the Plaintiff referred to a specified list of the goods that had been attached. The particulars of the goods attached and sold had not been set out in the Plaint. Nevertheless, the Plaintiff had filed a list of documents detailing the said goods. PW1 who is a Director of the Plaintiff company also itemized the goods in his witness statement dated 6<sup>th</sup> March 2025 which was adopted as his evidence-in-chief. Additionally, the documents, which were produced unopposed refer to the itemized goods which comprise hospital equipment. In the premises, I find that the proposed amendment is not seeking to introduce a new cause of action but to bring clarity to the Plaintiff's claim and to specify the relevant prayer that is necessary in order to address the real issues in controversy and to avoid a subsequent suit in the event of the court making a finding that the distress and sale were unlawful.
12. As to whether the application was made timeously, I note that both parties have equally contributed to the delay in this matter. Directions were only taken on 16<sup>th</sup> December 2024 and although the



application was made after six years, considering the fact that the suit had been at the pre-trial stage, coupled with interruptions during the Covid-19 pandemic, the delay cannot be said to be inordinate.

13. I have carefully considered the Plaintiff's application and taken into account the circumstances under which it was made. As submitted by the plaintiff, Article 50 of the *Constitution* entitles every person to a fair hearing. In this context, a fair hearing can only be had by the Plaintiff if it is allowed to prosecute its case in a manner that addresses all the issues he seeks to be addressed. That can only be done if an amendment to the Plaint is allowed since it is apparent that it had not included a specific prayer for loss of its property arising from the levy for distress of rent by the Defendants.
14. Concerning the other principle, it has not been demonstrated that the Defendants will suffer prejudice which cannot be compensated by costs. In any event, the Defendants have a draft amended defence and counterclaim which they never filed due to failure on their part to prosecute the application dated 22<sup>nd</sup> August 2019 for leave to amend the defence to incorporate a counterclaim for a sum in excess of Ksh. 20,000,000/=. The Defendants will therefore have the opportunity to file their counterclaim if the proposed amendment of the Plaint proceeds.
15. Flowing from the above, I hereby allow the Plaintiff's application and make the following orders:-
  - a. That the Plaintiff shall file and serve its amended Plaint within 10 days.
  - b. That the Defendants shall file and serve their amended defence and counterclaim within 10 days if need be.
  - c. That in the event the Plaintiff does not file its amended Plaint within 10 days, the leave to file amended Plaint shall lapse.
  - d. That the Defendants shall have thrown away costs assessed at Ksh. 15,000/= to be paid within 10 days.
16. Those are the orders of the court.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 31<sup>ST</sup> DAY OF OCTOBER 2025.**

**A. C. BETT**

**JUDGE**

In the presence of:

No appearance for the Parties

Court Assistant: Polycap

