

**REPUBLIC OF**  
**KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO.E.1005**  
**OF 2023**

**EDNAH**  
**KANGOGO.....CLAIMANT/APPLICANT**  
**ANT VERSUS**  
**CONSUMER GRASSROOTS**  
**ASSOCIATION.....RESPONDENT**

**RULING**

1. Before the court is the Claimant/Applicant's Notice of Motion application dated 20<sup>th</sup> May, 2025, 2022, brought pursuant to Rule 34 of the Employment and Labour Relations Court (Procedure) Rules 2024, Article 50 of the Constitution,2010. She seeks orders THAT: -
  - i. This Honourable court be pleased to grant leave to the Claimant to amend her statements of Claim dated 20<sup>th</sup> November, 2023 and filed in this court on 6<sup>th</sup> December,2023 as per the draft annexed hereto.
  - ii. The annexed draft amended statement of claim be deemed as duly filed on payment of the requisite fees.
  - iii. Costs of this application be in the cause.

2. The application is supported by grounds on the face of the motion and the supporting affidavit of **Ednah Kangogo**, the Applicant herein. The Applicant contends that at the time of filing this suit, the true legal status of the Respondent was not known to her, as that was information not within her docket.
3. She states that she has since become aware of the legal status of the Respondent. She avers that it took a substantial amount of time for her to find out the legal status and, as such, she was unable to procure a search from the Registrar of Societies, as information such as the certificate number of registration and file number of the Association, which are requisite for the procurement of a search, were not within her knowledge.
4. The Applicant avers that she has since procured a search from the Registrar of Societies and has since become aware that the Respondent is a registered society, and now wishes to amend her pleadings to bring the proper parties before the court.
5. The Applicant avers that it is only just and fair that the Statement of Claim be amended to reflect the new set of facts and ensure proper disposal of this matter.
6. She finally states that the Respondent and/or its office bearers will not be prejudiced in any way by the proposed amendments.

7. The Respondent opposed the application vide a Replying affidavit sworn by **Alice Nyaberi** on 16<sup>th</sup> June, 2025. The Respondent contends that the application seeking leave to amend the claim is brought in bad faith and is an abuse of the court process.
8. The Respondent contends that it raised the issue of legal capacity to sue on its preliminary objection dated 1st July 2024, and the same was decided by this court after being opposed by the Applicant.
9. It is the Respondent's position that the court, having pronounced itself on this matter on the issue of legal capacity, the same is now res Judicata. It avers that the main issue in this application is a lack of capacity in society, hence the amendment proposed by the Applicant cannot cure the lack of it.
10. It states further that this issue is not about technicality, but goes to the root of the entire pleadings, which would be cured by withdrawing the claim.
11. It finally avers that this claim is incompetent and the proposed amendment cannot redeem it at all, as the Applicant wants the court to assist her.
12. Parties were directed to canvass the motion by written submissions. The Applicant filed submissions; the Respondent did not.

13. The Claimant/Applicant's submissions have been duly considered.

### **Determination**

14. From the pleadings, affidavits, and submissions, the following issues arise for my determination: -

- i. Whether the Applicant has made a case for leave to amend the Statement of Claim.
- ii. Who should bear the costs of the application?

### **Whether the Applicant has made a case for leave to amend the Statement of Claim**

15. Rule 34 of the Employment and Labour Relations Court (Procedure) Rules, 2024, empowers the court to grant leave to amend pleadings at any stage of the proceedings. The principles that guide the amendment of pleadings are now well settled. In the case of ***Eastern Bakery v Castelino [1958] EA 461***, the court held thus: -

***“Amendments to pleadings should generally be freely allowed if they can be made without injustice to the other side and are necessary for the purpose of determining the real questions in controversy.”***

16. Similarly, in ***Ochieng & Others v First National Bank of Chicago [1995] eKLR***, the court held that

amendments should be allowed if they help to bring all issues into focus, provided they do not introduce a completely new cause of action or cause prejudice.

17. In the instant case, the amendment seeks only to correct the identity of the Respondent after discovery of its registration details. It does not alter the substantive cause of action or facts of employment giving rise to the claim.
18. It also goes without saying that the Respondent will have an opportunity to respond to the amended pleading. In the premise, the court finds the amendment necessary and just to ensure proper parties are before it for full adjudication of the dispute.
19. Accordingly, the court finds merit in the Claimant/Applicant's application, and grants the following orders: -
  - a) That Leave be and is hereby granted to the Claimant/Applicant to amend her Statement of Claim dated 20<sup>th</sup> November 2023 in terms of the annexed draft.
  - b) That the amended Statement of Claim shall be filed and served within 14 days of this ruling upon payment of the requisite court fees.
  - c) That the Respondent shall have 14 days thereafter to file and serve an amended response, if need be.
  - d) Costs shall be in the cause.
20. Orders accordingly.

**SIGNED, DATED, AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup>  
DAY OF NOVEMBER, 2025**

**C. N. BAARI  
JUDGE**

**Appearance:**

Ms. Mutuku present for the Applicant/Claimant

N/A for the Respondent

Ms. Esther S - Court Assistant

ORIGINAL