



**International Air Transport Association – IATA & another v Nordic
Tours & Safaris Limited & 2 others (Commercial Case 339 of 2009)
[2025] KEHC 16006 (KLR) (Commercial and Tax) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16006 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 339 OF 2009
AA VISRAM, J
NOVEMBER 6, 2025**

BETWEEN

**THE INTERNATIONAL AIR TRANSPORT ASSOCIATION –
IATA 1ST PLAINTIFF**

SAHAM ASSURANCE COMPANY KENYA LIMITED 2ND PLAINTIFF

AND

NORDIC TOURS & SAFARIS LIMITED 1ST DEFENDANT

AMIN GWADERI 2ND DEFENDANT

GULSHAN HUSSEIN DHANJI 3RD DEFENDANT

RULING

Introduction & Background

- By the Notice of Motion dated 21st August, 2024, the Plaintiff seeks the leave of the court to further amend their plaint in terms of the draft Further Amended Plaint annexed to the deposition of Sarah Weru, the 2nd Plaintiff’s Company Secretary, sworn on 21st August, 2024. The deponent has also filed a Further Affidavit sworn on 7th November, 2024, in support of the application. The Defendants oppose the application through the Grounds of Opposition dated 17th October, 2024. To supplement their positions, the parties have also relied on the written and oral submissions by their respective Counsel and I will be making relevant references to the same in my analysis and determination below.



Analysis & Determination

2. I am in agreement with the Plaintiffs' submission that the Civil Procedure Rules grants the court discretionary power to allow amendment of pleadings as follows under Order 8, rule 3(2) and (5) and rule 5:-

Amendment of pleading with leave [Order 8, rule 3]

- (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.

.....

5. General power to amend [Order 8, rule 5]

- (1) For the purpose of determining the real question in controversy between the parties, or correcting any defect or error in any proceedings, the court may either on 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. (Emphasis mine)

3. The Court of Appeal, in *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] KECA 345 (KLR) held as follows in respect of amendment of pleadings:-

“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 vs. 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.” (Emphasis mine)



4. The Plaintiffs state and submit that the purpose of the amendments sought is to clarify the legal causes of action against the Defendants and that they are material to the core issues of the case, which are: Whether the 1st Defendant breached a contract with the 1st Plaintiff, whether this breach makes the 2nd and 3rd Defendants liable, and whether there is a valid subrogation claim from the 2nd Plaintiff against the 1st Defendant. That these new details will help the Court resolve the entire dispute conclusively and avoid multiple lawsuits on the same matter and that the Defendants will not be unfairly disadvantaged because the main trial has not yet started, the Defendants will be allowed to amend their own defense in response and the application is made in good faith and is in the interests of justice.
5. In response, the Defendants state that there is already a Notice of Motion application dated 21st January, 2016, filed by the Plaintiffs which touches on the same issues as the present application and that they are estopped by law from making the said application. That the Plaintiffs changing the 1st Plaintiff is not only mischievous but scandalous and that there is further mischief as there is a joinder of issues and allowing the application will allow the Plaintiffs repair and remedy its suit and that the application is an abuse of the “oxygen principle”.
6. Having considered the application, the response and submissions, whereas the Defendants stated that there is another application dated 26th January, 2016 (erroneously referred to as 21st January, 2016) touching on the same issues, I agree with the Plaintiffs that the same was determined by the court (Tuiyott J., as he was then) in a ruling dated 31st January, 2020, where the Applicants therein were allowed to amend their plaint, thus introducing the Plaintiffs as parties to the suit. As indicated in the Rules cited above, pleadings can be amended at any stage of the proceedings and there is nothing defective about the Plaintiffs seeking to further amend their plaint now.
7. On whether the plaint should be amended, I take note that the Respondents introduced grounds opposing the amendments that are not in their Grounds of Opposition or any affidavit. As Korir J., (as he was then) held in *Republic v Chairman Public Procurement Administrative Review Board & another Ex-Parte Zapkass Consulting And Training Limited & another* [2014] KEHC 8008 (KLR), “Submissions are not pleadings. There is no evidence by way of affidavits to support the submissions. New issues raised by way of submissions are best ignored.” (Emphasis mine). I will therefore not consider those grounds that are being raised in the submissions for the first time.
8. Thus, having gone through the Further Amended Plaint that has been annexed, I find that the amendments sought therein are not a material departure of what is already contained in the plaint and serve to elucidate the legal and factual basis of the Plaintiffs’ claims. I find that they provide crucial details regarding the insurance policy, the payment of the claim by the 2nd Plaintiff, and the consequent right of subrogation. This clarity is essential for defining the real issues in controversy and for a fair trial. Further, I find that no prejudice will be suffered by the Defendants if the Plaintiffs are allowed to amend their plaint as the matter is still at a pre-trial stage and has not been set down for hearing. Any procedural prejudice will be adequately mitigated by the grant of corresponding leave to the Defendants to amend their defences. Furthermore, the interests of justice can be protected by an appropriate order as to costs, payable by the party seeking the amendment.

Conclusion & Disposition

9. In the upshot, I allow the Plaintiffs’ application dated 21st August, 2024, and make the following orders: -
 1. The Plaintiffs are granted leave to amend their Amended Plaint dated 14th February, 2020, in the manner set out in the Draft Further Amended Plaint annexed to the Supporting Affidavit.



2. The said Draft Further Amended Plaint dated 21st August, 2024, shall be deemed as duly filed and served upon payment of the requisite court fees within the next seven (7) days from the date of this Ruling.
3. The Defendants are granted corresponding leave to file and serve their Amended Defences within twenty-one (21) days from the date of service of the duly filed Further Amended Plaint.
4. The costs of this application shall be payable by the Applicant.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 6TH DAY OF NOVEMBER, 2025

ALEEM VISRAM, FCI Arb

JUDGE

In the presence of;

Court Assistant: Lipa

.....for 1st Plaintiff

.....for 2nd Plaintiff

.....for 1st Defendant

.....for 2nd Defendant

.....for 3rd Defendant

