



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
CIVIL SUIT NO. 336 OF 2017

BETWEEN

LADY LORI (KENYA) LIMITED
PLAINTIFF/RESPONDENT

AND

TYL LIMITED **1ST**
DEFENDANT/APPLICANT

KWACHA GROUP OF COMPANIES LTD **2ND**
DEFENDANT/APPLICANT

WANJIGI JIMI RICHARD **3RD**
DEFENDANT/APPLICANT

RULING

Introduction and Background

1. The application dated 19th August 2025 is brought under **Order 8 rule 3 and 5**, amongst others. The applicants seek leave to file and serve an Amended Statement of Defence and Counterclaim in the terms of the draft annexed to the application. The said application is supported by the affidavit sworn by JIMI RICHARD WANJIGI, on 19th August 2025.

2. The applicants contend that pursuant to the directions issued on 15th May, 2025, an inspection was conducted on the helicopter bearing registration number 5Y-JWJ. They received an audit report revealing serious concerns about the aircraft's integrity, which issues were unknown at the time of filing the initial Statement of Defence.
3. Consequently, the applicants seek leave to amend the Statement of Defence and file a Counterclaim to address these newly discovered matters comprehensively. It is argued that this amendment serves the interest of justice and will prevent multiple suits.
4. The application is opposed by the replying affidavit of WALEGWA MWASAWA sworn on 3rd September 2025. The respondent contends that this matter has been ongoing since 2017, with the applicants having filed their initial defence in 2018 and subsequently seeking amendments in 2020 to include claims of physical interference with the helicopter. They confirm that an inspection was conducted by the Kenya Civil Aviation Authority, and by a consent order dated 28th February 2020,

the applicants were granted leave to amend their pleadings.

- 5.** Despite multiple extensions granted by the Court, the applicants delayed both the inspection and the filing of their amended defence and counterclaim. The inspection was eventually conducted in October 2020, and the amended pleadings were served in February 2021. The matter was certified ready for hearing in November 2021.
- 6.** The respondent argues that the applicants have repeatedly raised the same issues, causing delays and obstructing the progress of the case. A second inspection was allowed in May 2025, with a directive to file the resulting report within 30 days. However, the applicants failed to comply with this timeline and now claims that new issues have emerged, necessitating a fresh counterclaim.
- 7.** The respondent asserts that these alleged new issues are neither novel nor unforeseen, but rather a repetition of previously canvassed matters. The application is viewed as a tactic to delay proceedings further, despite the case being

scheduled for hearing on 23rd September 2025 and the last adjournment already granted.

8. In light of the prolonged litigation and prejudice suffered by the respondent, the respondent urges the Court to dismiss the application as frivolous and an abuse of process. Nonetheless, should the Court allow the application, the respondent prays for leave to file additional documents or witness statements to address any new matters raised.

Analysis and Determination

9. I have carefully considered the pleadings and submissions filed by the parties. The overriding objectives under **Section 1A and 1B of the Civil Procedure Act** mandate the Court to facilitate the just, expeditious, proportionate, and affordable resolution of civil disputes. Parties are expected to assist the Court in furthering these objectives by avoiding unnecessary delays and ensuring procedural efficiency.
10. In this case, the record speaks for itself. It is evident that the applicants have repeatedly failed to adhere

to timelines and have sought multiple mentions on the issue of inspection of the aircraft, dating as far back as the year 2020. Their conduct reflects a lack of diligence and a disregard for the Court's timelines. It has equally undermined the principle of expeditious disposal and has occasioned prejudice to the respondent, who has been in litigation for over eight years. I cannot therefore ignore the applicants' history of delay.

- 11.** While the applicants' conduct has been marked by repeated delays and procedural indulgences, I remain guided by the principle that substantive justice must prevail over technicalities. If the proposed amendments are indeed necessary to address newly discovered issues, they may be allowed, but only under stringent conditions to safeguard against further abuse of process. This position is reinforced by the fact that the hearing has not yet commenced, and the respondent will have a fair opportunity to respond to any new matters introduced.

Disposition

- 12.** I accordingly allow the application dated 19th August 2025 but on the following terms:

- i. The applicants shall file and serve the Amended Statement of Defence and Counterclaim within seven (7) days from the date of this ruling. Should the same be filed outside of this time it shall be deemed as expunged without any recourse to this Court.***
- ii. The respondent is granted corresponding leave to file and serve any additional documents or witness statements in response to the amended pleadings within fourteen (14) days thereafter.***
- iii. For ease of reference during trial, the parties shall file and serve their respective conclusive and paginated trial bundles at least 14 days before trial.***
- iv. Costs of this application shall be in the cause.***

**DATED, SIGNED AND DELIVERED AT NAIROBI
THIS 14TH DAY OF NOVEMBER 2025.**

**F. MUGAMBI
JUDGE**