



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sabatia Investment Limited v Hari Gakinya & Co Advocates (Civil Case  
6 of 2019) [2025] KEHC 15865 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15865 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL CASE 6 OF 2019  
PN GICHOHI, J  
NOVEMBER 5, 2025**

**BETWEEN**

**SABATIA INVESTMENT LIMITED ..... APPLICANT**

**AND**

**HARI GAKINYA & CO ADVOCATES ..... RESPONDENT**

**RULING**

1. By a Notice of Motion dated 16<sup>th</sup> June, 2025, and brought under Article 159 of *the Constitution*, Sections 1A,1B & 3A of the *Civil Procedure Act*, Order 8 Rule 3 and 5 and Order 51 of the Civil Procedure Rules, the Plaintiff seeks Orders that:-
  1. Spent.
  2. The Plaintiff/ Applicant be granted leave to amend its Originating Summons dated 13<sup>th</sup> February, 2019 by changing the name of the Respondent from Hari Gakinya & Company Advocates to Hari Gakinya T/A Hari Gakinya & Co Advocates.
  3. Upon grant of prayer (2) the Amended Originating Summons be deemed as duly filed and served subject to payment of the requisite Court fees.
  4. Cost of this application be in the cause.
2. The application is supported by the Affidavit sworn on 16<sup>th</sup> June 2025 by Kenneth Toroitich in his capacity as one of the Directors of the Applicant.
3. He states that the reason for the amendment is to precisely identify the natural person against whom the reliefs flow, as the Respondent is currently listed as a business name.
4. According to the Plaintiff, the proposed amendment will not introduce a new party or cause of action and that it is being sought in good faith without prejudicing the Defendant.



5. In addition, it is deponed that the case has been in court for over five years since the Originating Summons was filed on 13<sup>th</sup> February, 2019, is partly heard and now scheduled for further hearing on 19<sup>th</sup> November, 2025. Accordingly, that given the urgency, as the Plaintiff is seeking an order for the defendant to deposit a balance of Kshs. 17,872,598 into court, it is imperative that the application be considered and allowed.
6. Kiage Ezra Juma advocate in the firm of Gordon Ogola & Associates Advocates, filed an Affidavit of Service on behalf of the Plaintiff herein. He states that on 20<sup>th</sup> June, 2025, he served both the Court Directions dated 19<sup>th</sup> June, 2025 and the current application to the Defendant's firm, M/s Hari Gakinya & Co. Advocates through their email jhgakinya@gmail.com, from the email address goadvocates25@gmail.com, in accordance with Order 5 Rule 22B of the Civil Procedure Rules. However, that no response was received from the Respondent.
7. On 29<sup>th</sup> July, 2025, the Plaintiff filed a Supplementary Affidavit sworn by Gordon Ogola Advocate who is in conduct of this matter stating that his office previously made a clerical error by not attaching the Draft Amended Originating Summons to the application dated 16<sup>th</sup> June, 2025.
8. He states that the error was an inadvertent oversight and that he has therefore attached the draft amended Originating Summons marked as "GO 1".

### **Determination**

9. The only issues for determination herein are whether the amendment sought is merited and if so, who should bear costs of the application.
10. Amendment of the pleadings is provided for under Order 8 of the Civil Procedure Rules. And specifically, Rule 3 thereof provides as follows:-

“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 sub rule (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 sub rule if it thinks just so to do.
3. An amendment to correct the name of a party may be allowed under sub rule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.
4. An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under sub rule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued.
5. An amendment may be allowed under sub rule (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.”



11. Regarding the principles for consideration in an application for amendment of pleadings, Shah JA observed thus, in the case of *Joseph Ochieng & 2 others Trading as Aquiline Agencies v First National Bank of Chicago* [1995] KECA 31 (KLR):-

“Mr. Regeru quoted extensively from Bullen and Leake & Jacob's Precedents of Pleading 12th Edition to support his arguments in justification of the learned judge's order. 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 exact nature of proposed amendment sought ought to be formulated and be submitted to the other side and the court; that adjournment should be given to the other side if necessary if an amendment is to be allowed; that if the court is not satisfied as to the truth and substantiality of the proposed amendment it ought to be disallowed; that the proposed amendment must not be immaterial or useless or merely technical; that where the plaintiff's claim as originally framed is unsupported an amendment which would leave the claim equally unsupported will not be allowed ; 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 but subject however to powers of court to still allow such an amendment notwithstanding the expiry of current period of Limitation: that the court has powers even (in special circumstances) to allow an amendment adding or substituting a new cause of action if the same 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 action by the party applying for leave to seek the amendment.”

12. The Court of Appeal in *Sadera & 2 others v Kerema & 7 others* (Civil Appeal 89 of 2019) [2025] KECA 458 (KLR) further enumerated the principles of amendment of pleadings as follows:-
- a. Amendment of pleadings can be allowed at any stage of the proceedings.
  - b. Amendment must be necessary to determine the “real question in controversy” “inter se parties”;
  - c. If such amendment is sought to be brought after commencement of trial the court must, in allowing the same come to a conclusion that in spite of best efforts on the part of the party to the suit, the same could not have been brought before the point of time, when it was actually brought.
  - d. Amendments will not be allowed if they will cause injustice to the other party;
  - e. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.”
13. Applying the above principles to this case, this Court has considered the nature of the amendment sought as per the Draft Amended Plaint.



14. No doubt the Plaintiff/Applicant filed this suit against Hari Gakinya & Company Advocates but has now discovered that the said firm of Advocates is registered as a business name.
15. It is a fact, that this matter can be considered as partly heard in that the first witness took his stand on 26/5/2025 but did not complete his evidence in- chief. He was stood down upon Mr. Gakinya's objection in regard to production of documents. The Court delivered a ruling on the same on 16<sup>th</sup> Day of June, 2025 overruling the objection.
16. The instant application has not been responded to despite being duly served. Considering the reason given for the amendment, and the circumstances thereof, it is necessary for the pleadings to reflect the correct name of the Defendant/Respondent in this suit. The nature of amendment will enable the court to determine the real issue in controversy without causing any injustice or prejudice to the Defendant/Respondent.
17. Under section 27 of the [Civil Procedure Act](#), costs shall follow the event and are within the discretion of the court.
18. In conclusion, this Court make the following Orders;-
  1. The Plaintiff/ Applicant is granted leave to amend his originating summons dated 13<sup>th</sup> February, 2019 by changing the name of the Respondent from Hari Gakinya & Company Advocates to Hari Gakinya T/A Hari Gakinya & Co Advocates.
  2. The annexed Amended Originating Summons Dated 6<sup>th</sup> June, 2025 be deemed duly filed upon payment of requisite court fees.
  3. The Amended Originating Summons and summons to enter appearance shall be served on the Respondent/Defendant within 14 days hereof and an affidavit of service filed to that effect.
  4. The cost of this application to abide the outcome of the suit.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Mr. Ngure holding brief for Mr. Ogola for the Plaintiff

N/A for Defendant

Faith, Court Assistant

