



**Bidco Africa Limited v Mega Wholesalers Limited (Civil Suit  
E021 of 2024) [2025] KEHC 17028 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17028 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL SUIT E021 OF 2024  
PN GICHOHI, J  
NOVEMBER 19, 2025**

**BETWEEN**

**BIDCO AFRICA LIMITED ..... PLAINTIFF**

**AND**

**MEGA WHOLESALERS LIMITED ..... DEFENDANT**

**RULING**

1. Mega Wholesalers Limited (herein referred to as the Applicant) moved this Court by a Notice of Motion dated 28<sup>th</sup> April, 2025 under Section 1A, 1B & 3A of the *Civil Procedure Act*, Order 8 rule 3 and Order 51 rule 1 of the Civil Procedure Rules seeking Orders that:-
  1. It be granted leave to amend its defence as per the draft amended statement of defence and counterclaim annexed to the application.
  2. The draft amended statement of defence and counterclaim be considered as duly filed upon payment of the required filing fees.
  3. Costs be in the cause.
2. In support of the application, Abdi Mohammed Ali swore an Affidavit on even date and in his capacity as the Director of the Applicant. He deponed that Bidco Africa (herein referred to as the Respondent), filed this suit against them on 10<sup>th</sup> June, 2024 and they filed their original defence on 8<sup>th</sup> July, 2024.
3. However, some important events have taken place after the filing of the defence and therefore, it is necessary to amend its statement of defence to enable the court fully and completely adjudicate the questions involved in the suit.
4. He deponed that the matter proceeded for hearing before pleadings were closed and that the advocates failed to include other pertinent issues in the earlier defence.



5. He asserted that the Respondent has not filed or served a reply to the defence or a statement of agreed issues or pre-trial questionnaire. Further that it moved with speed to make this application upon realising these issues and that it is ready to abide by any terms the court may impose.
6. According to him, the Applicant will suffer irreparable harm if the application is not allowed, while any prejudice to the Respondent can be compensated with damages and in circumstances, it is in the interest of justice to allow the prayers sought.
7. In response to that application, the Respondent filed a Replying Affidavit sworn by its legal officer Melanie Kilote on 16<sup>th</sup> May, 2025. She stated that the Respondent is not opposed to the Applicant's request to amend its defence and introduce a counterclaim, as long as it helps the Court determine all the issues in dispute.
8. However, she stated that this concession is made without prejudice to the Respondent's right to seek judgment on admitted facts.
9. She argued that the proposed amended defence effectively confirms the core allegations in the original plaint, specifically the long-standing commercial relationship between the two companies, the supply of goods by the Respondent to the Applicant partial settlement of invoices, and the Respondent's entitlement to payments of over Kshs. 75 million.
10. It was further argued that paragraph 5 of the amended defence admits to receiving the goods, and the attached annexures implicitly concedes the Respondent's claim, with the exception of a disputed set-off for transport services.
11. According to the deponent, these admissions allow the case to fall under Order 13 Rule 2 of the Civil Procedure Rules, which permits a party to seek judgment on admitted facts. She claimed that the Applicant's new pleadings do not genuinely dispute the debt but instead attempt to offset it, which is not a valid defence to the main claim.
12. She noted that the Court had previously denied a request for summary judgment on 26<sup>th</sup> February, 2025, partly because conciliation had not been pursued. She stated that the Respondent now believes that the new admissions in the amended pleadings represent a material change in circumstances under Order 45 Rule 1 of the Civil Procedure Rules, justifying a review of the earlier ruling.
13. She asserted that the proposed counterclaim for Kshs. 78,721,218.66 is not supported by sufficient documentation, such as transport contracts, delivery notes, or payment instructions. Further that this amount is inflated, unliquidated and contrived to frustrate a valid claim.
14. She deponed that the timing and nature of the amendment suggest a calculated attempt to delay the suit.
15. Further, that the Applicant's non-payment has caused financial hardship, operational disruption and an increase in unpaid receivables. In contrast, that any prejudice suffered by the Applicant can be compensated by costs or a set-off, if proven, unlike the Respondent's prejudice which continues to escalate.
16. As a result, she urged the Court to admit the Applicant's amended defence and counterclaim but without prejudice to its right to challenge them.
17. Additionally, she requested for judgment on the admitted principal sum under Order 13 Rule 2 of the Civil Procedure Rules, or in the alternative, a review of the court's ruling delivered on 26<sup>th</sup> February, 2025.



18. She also sought to have the counterclaim struck out for not disclosing a reasonable cause of action or to have the trial limited only to the counterclaim. She sought the costs of the application.

### **Applicant's Submissions**

19. In its written submissions dated 16<sup>th</sup> June, 2025, the Applicant reiterated its leave to amend its defence to include a counterclaim against the Respondent arguing that its original defence, filed on 8<sup>th</sup> July, 2024 denied the debt of Kshs. 571,330,258.73 claimed by the Respondent .
20. The Applicant asserted that the Respondent is indebted to its subsidiary for Kshs. 78,721,218.66 for transportation services provided between 2021 and 2023.
21. Furthermore, the Applicant invoked bank guarantees worth Kshs. 370,000,000.00 on 14<sup>th</sup> December, 2023, and allegedly imposed an interest of Kshs. 238,094.00, which was not part of their mutual agreement.
22. The Applicant argued that the outstanding amount was settled and that the amendment is necessary to reflect the true and accurate amount that is owed to the Respondent.
23. It asserted that the application is in the interest of justice, as it will correct the amount claimed by the Applicant and allow for a counterclaim on the alleged debt.
24. Further, it stated that Order 8 Rule 3 of the Civil Procedure Rules allows for the amendment of pleadings at any stage of the proceedings with the court's leave, and that the Court has the necessary power to grant such leave under Order 8 Rule 5.
25. The Applicant submitted that no prejudice will be caused to the Respondent, as the amendment only corrects the amount owed and does not change the core of the Respondent's case.
26. Conversely, that the Applicant will suffer great economic loss and irreparable damage if the application is not allowed. To support its position, the Defendant cited several case laws including ST Patrick's Hill School Ltd -vs- Bank of Africa Kenya Ltd (2018) eKLR quoted in Inter Tropical Trading Limited - vs- Kenya Power and Lighting Company Ltd [2021] eKLR, on the principles governing amendments, including the court's power to allow amendments at any stage to determine the substantive merits of a case.
27. Further, he cited the decision in Bamburi Cement Limited v Furncon Limited [2015] KEHC 4301 (KLR) and in Kenya Cold Storage (1964) Ltd -v-s Overseas Food Services (Africa) Ltd [1982] eKLR, stating that courts can allow amendments to include new causes of action.
28. The Applicant further argued that the purposed amendment is to prevent a multiplicity of suits, as a separate claim for the amount owed by the Respondent would not make sense. Reliance was placed on the case of William Lokapel -V- Veronica Lokapel [2014] eKLR to support the argument that amendments that enable a court to solve all issues without requiring multiple cases should be freely given.
29. In conclusion, it was submitted that the application was made in a timely manner, in good faith, and is intended to determine the true merits of the case.

### **Respondent's Submissions**

30. It asserted that the proposed amended defence effectively concedes key elements of its original claim and that those concessions include the existence of a commercial relationship, the supply of goods by the Respondent to the Applicant, and the partial settlement of outstanding invoices.



31. According to the Respondent, the new pleadings admit the debt but seek to offset it with a purported set-off for transport services. The Respondent maintained that these new admissions bring the case under Order 13 Rule 2 of the Civil Procedure Rules, which allows for a party to seek judgment on admitted facts.
32. The Respondent submitted that these admissions constitute a material change in circumstances, justifying a review of the court's earlier ruling on 26<sup>th</sup> February, 2025, which had declined to grant summary judgment. It casts doubt on the validity of the Applicant's Counter-claim for Kshs.78,721,218.66, stating that it is unsupported by any cogent documentation and appears to be an inflated and contrived amount meant to frustrate a meritorious claim.
33. The Respondent asserted that the Applicant's non-payment has caused it significant financial hardship and operational disruption. Further, it argued that the Applicant's alleged prejudice, if any, could be compensated with damages, while the Respondent's prejudice continues to grow with time.
34. In light of the above, the Respondent urged the Court to admit the amended defence and counterclaim, but without prejudice to its right to challenge them and grant judgment on admission under Order 13 Rule 2 for the principal sum admitted by the defendant.
35. In the alternatively, the Respondent urged review of the previous ruling of 26<sup>th</sup> February, 2025, based on the new admissions and strike out the counterclaim for not disclosing a reasonable cause of action, or in the alternative, limit the trial to the counterclaim only. It prayed that the costs of this application be awarded to it.

### **Analysis and Determination**

36. After considering the application, Affidavits in support and the rival submissions by the parties, the issues for determination herein are:-
  1. Whether the amendment sought should be granted.
  2. Whether judgment on admission should be entered.
  3. Who should bear costs of the application.
37. The Applicant based his application on amendment of Defence under Order 8 (3) of the Civil Procedure Rules which provides that;-
  3.
    - (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 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.”

38. 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.”
39. In this case, the Applicant’s Draft Amended Defence denies most of the Plaintiff’s claims, including the alleged contract and the outstanding balance of Kshs. 571,330,258.73.
40. However, it alleges that the Respondent owes its subsidiary, (Applicant) Kshs. 78,721,218.66 for transportation services rendered between year 2021 and 2023.
41. The Applicant pleads that this debt should be used to clear all outstanding amounts owed by the Applicant, thus negating the alleged Kshs. 571,330,258.73 debt.
42. The Applicant further states that on 14<sup>th</sup> December, 2023, the Respondent invoked bank guarantees for Kshs. 370,000,000.00 and imposed an interest of Kshs. 238,152,094.00, which was not part of the mutual agreement.
43. It claims that the total amount owed to it by the Respondent is Kshs. 445,816,032.74, and seeks a declaration that this amount, paid by the bank guarantees and the money withheld, constitutes the final payment of the money owed by the Respondent to them. It also seeks the cost of the suit and any other relief the court deems fit.
44. This Court is satisfied that the issues raised in the Draft Amended Defence and Counterclaim should be heard on merit. That will be achieved by the amendment sought.



45. Further, this Court finds the Respondent's argument and prayer by the Respondent for " Review of ruling of 26<sup>th</sup> February, 2025 ..." or entry of " judgment on admissions" untenable in the circumstances of this case.
46. Considering the nature of this case, the parties herein should take deliberate steps to have this suit heard urgently and on merit .
47. In conclusion thereof, the application is allowed in the following terms;-
1. The DefendantApplicant be and is hereby granted leave to amend its defence as per the draft amended statement of defence and counterclaim annexed to the application.
  2. The draft amended statement of defence and counterclaim be considered as duly filed upon payment of the required filing fees.
  3. The Respondent to file and serve a reply to the defence and counterclaim within 14 days of this ruling.
  4. Costs of this application be in the cause.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Mr. Opondo for the PlaintiffRespondent

Ms Okoth for DefendantApplicant

Kamau, Court Assistant

