



**Republic v Advocates Complaints Commission & 2 others; Omwanza
 (Ex parte Applicant) (Judicial Review Miscellaneous Application
 E003 of 2024) [2026] KEELC 281 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 281 (KLR)

REPUBLIC OF KENYA

**IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
 JUDICIAL REVIEW MISCELLANEOUS APPLICATION E003 OF 2024**

MN MWANYALE, J

JANUARY 29, 2026

**IN THE MATTER OF AN APPLICATION FOR
 JUDICIAL REVIEW ORDERS OF CERTIORARI AND
 IN THE MATTER OF ENVIRONMENT AND LAND COURT AT KILGORIS SUIT**

NO. E014 OF 2022

AND

**IN THE MATTER OF THE COMPLAINT LODGED WITH THE ADVOCATES
 COMPLAINTS COMMISSION**

AND

**IN THE MATTER OF THE LETTER FROM THE ADVOCATE
 COMPLAINTS COMMISSION DATED 4TH NOVEMBER, 2024**

AND

IN THE MATTER OF THE SUBJUDICE RULE

BETWEEN

REPUBLIC APPLICANT

AND

ADVOCATES COMPLAINTS COMMISSION 1ST RESPONDENT

ESIKAR GARDENS AND HOTELS LIMITED 2ND RESPONDENT

CHARLES SUNKULI TALENG'O 3RD RESPONDENT



AND

OMBATI S OMWANZA EX PARTE APPLICANT

RULING

1. Upon consideration of the Notice of Motion dated 17th June 2025 filed by the Exparte Applicant and seeking leave of the court to amend
 - i. Chamber Summons dated 5th November 2024,
 - ii. Statement of Facts/statutory statement dated 5th November, 2024,
 - iii. Notice of Motion dated 7th November 2024 and
 - iv. an additional order that the Exparte Applicant be granted 14 days to file and serve the Amended pleadings and related documents on the parties, together with a prayer that costs be in the cause
2. Upon further consideration of the grounds in support of the said application which grounds are stated to be interalia; -
 - i. Leave has to be obtained before the Exparte Applicant can amend its pleadings, which amendments are necessary to bring into focus the real issues in controversy for the determination by the court on their true and substantive merits.
 - ii. That the application has been made on bona-fide grounds and no prejudice will be occasioned to other parties if the Application is allowed.
3. And which application was supported by the supporting affidavit of Mr. Ombati S. Omwanza the Exparte Applicant who reiterated the grounds in support of the application and has annexed draft copies of the amended pleadings.
4. Taking into account that the 1st Respondent, being the Advocates complaints commission was not opposed to the Application but the 2nd and 3rd Respondents being Esikar Gardens and Hotels Limited and well as Mr. Charles Taleng'o Sunkuli respectively, who filed a Response by way of a Replying Affidavit and deponed therein interalia that; -
 - i. The grounds in support of the substantive motion were that proceedings before the 1st Respondent were in violation of the sub-judice rule in view of an application to enjoin the Exparte Applicant in Kilgoris ELC No. E014/2022, that the jurisdiction of the court and 1st Respondent being different, means that it is only ELC that can grant the orders for specific performance while the 1st Respondent is mandated to inquire into complaints against advocates and the issue of subjudice could not therefore arise.
 - ii. That the court dismissed the joinder application on 27.01.2025 holding interalia that the complaint against the Exparte Applicant had been filed before the 1st Respondent, hence the alleged violation of subjudice rule had been overtaken by events and current application for amendment of the leave application and substantive motion is an attempt by Exparte Applicant to try and breathe life to the judicial review application, as the complaint before the 1st Respondent is not vexatious and/or an abuse of the court process as the 2nd Respondent discovered that Exparte Applicant had after filing of E014/2022 issued a completion Notice without instruction and the vendor allegedly refunded the deposit of Khs.10,000,000 which



the Exparte Applicant did not disclose to the 2nd Respondent and continues to hold the monies to date.

- iii. That the JR herein was filed after the 2nd Respondent's advocates wrote to the Exparte Applicant seeking confirmation as to whether he was still retaining the said Khs.10,000,000 thus the JR a delaying tactic.
 - iv. That the new ground introduced in the JR is frivolous as it is the 1st Respondent with the statutory mandate to determine what is an abuse of its process, and the Exparte Applicant is improperly using this court as a shield to avoid being answerable before the 1st Respondent yet he has not answered the alleged refund of Khs.10,000,000 as he was not enjoined as a party in ELC Case No. E014/2022.
5. The court directed the motion to be canvassed by way of written submissions.
 6. Thus, upon consideration of the Exparte Applicants submissions in which he submits, interalia, that Order 8 Rule 5 of the Civil Procedure Rules, as read together with Section 100 of the Civil Procedure Act empowers courts to allow Amendments so as to bring out the real question in controversy. The Applicant placed Reliance was a decision in the case of Central Kenya Ltd Vs. Trust Bank Ltd and 5 Others (2000) KECA 367 KLR as well as in Republic Vs. Chief Land Registrar and 2 Others; Fadhi Construction and Fadil Construction and Transport Co. Ltd Exparte Mbinda and Another E116 of 2024) KECH 14999 KLR to buttress the point on Amendment generally and Amendment of substantive motion in a Judicial Review.
 7. The Applicant further submits that the proposed amendments do not introduce new course of action as they stem from the same factual background and Applicant seeks to expand the grounds of abuse of process, in terms of institution of parallel disciplinary proceedings with issues before the ELC, and reliance placed on the decision of Joseph Ochieng and 2 Others Vs. First National Bank of Chicago, Civil Appeal No. 149/1991.
 8. The Applicant submits that no prejudice will be occasioned to the Respondents and urges the court to allow the application.
 9. Having also taken into consideration the 2nd and 3rd Respondent's submissions, in which the Respondents submits interalia that; - the ground of subjudice relied on by the Applicant has been overtaken by events since the complaint had been filed in the proper forum being the ACC as observed in the Ruling dated 27th January 2025 hence the ground of subjudice sought to be introduced has been overtaken by event.
 10. The 2nd and 3rd Respondent further submits this court has no jurisdiction to determine whether the complaint before the ACC is an abuse of the court process, as the law to wit Advocates Act section 53 thereof vests that authority on the ACC.
 11. The 2nd and 3rd Respondent submit further that the complaint before the ACC is not vexatious and was not filed to obtain a collateral purpose, as it raises weighty issues of whether the Exparte Applicant wrote the demand notice dated 7th March 2022 to the seller, whether the Exparte Applicant refunded the Kshs.10,000,000 and whether he released the original title he was holding on a stakeholder basis.

Issues for Determination

12. Having analyzed the application, the rival affidavits, the submissions and considered the applicable law, the court frames the following as issues for determination;



- i. Whether or not the application for Amendment is merited? In answering this the court shall consider,
 - a. Whether the application raises a new cause of action?
 - b. Whether the application is prejudicial to the Respondent.
 - c. Whether it is procedural to amend a substantive Notice of Motion in Judicial Review proceedings?
- ii. What reliefs ought to be issued?
- iii. Who bears the costs of the application.

Analysis and Determination

13. It is to be noted by the parties herein, the Application for determination is not the substantive Notice of Motion seeking to quash the letter dated 4th November 2024, but the one that seeks to amend the said substantive Motion. In the draft Amended Motion, there is a proposed Amendment to the title of the case to introduce. “In the matter of abuse of the Advocates disciplinary process and in the matter of the institution of vexatious disciplinary proceeds for a collateral purpose...” also sought to be amended to include the same said title to the prayer No. 1 of the reliefs and two additional grounds 10 and 11 both of which reflect the same issue of abuse of process and the issue of the proceedings been used for collateral purpose.
14. From the above excerpt, new grounds are sought to be pleaded but the said new grounds have not changed the relief sought in the substantive Notice of Motion. The relief of certiorari sought is still the same in which leave to commence the JR was initially sought and obtained.
15. On whether there will be prejudice occasioned to the 2nd and 3rd Respondents, in allowing the amendments, the court is of the view that since the 2nd and 3rd Respondent will be given an opportunity to be respond to the Amended Notice of Motion, no prejudice would be occasioned to them, as they will have a chance to respond to the issues therein.
16. An amendment to a pleading can ordinarily be allowed under section 100 of the *Civil Procedure Act* so as to bring out the real issues in controversy and in question.
17. The Statement of Fact/statutory statement is the main pleading in a Judicial Review as was held in the case of Commissioner General Kenya Revenue Authority Vs. Silvano Orema Owakitta Marenga Filing Station 2021 (eKLR) where the Court of Appeal held as follows; - “We must observe that it is the verifying affidavit not the statement to be verified which is of evidential value in an application for Judicial Review...”
18. Consequently, a substantive Notice of Motion cannot be amended in vacuum, the Amendment must commence from the statement of fact/statutory statement since the substantive Notice of Motion ought to seek reliefs for which the leave was granted, as was held in Republic Vs. Chief Magistrates Court Nairobi Exparte Geft Koinange and 11 Others 2017 (eKLR) where the court held interalia,
 - “ 43. From the above provisions of the law, it is clear that the reliefs sought and grounds upon which that (those) reliefs are predicated must be contained in the statutory statement and nowhere else, unless leave is sought to amend the statutory statement.



44. In the instant case, the amendment was done to the substantive notice of Motion and not in the statutory statement. Accordingly, this court's finding is that the prayers/grounds/reliefs sought in the amended Notice of Motion, and which were not contained in the original chamber summons for leave and/or statutory statement cannot be the basis upon which the application or substantive motion could be predicated and therefore the court would not accept those additional prayers and/or ground and reliefs in the amended notice of motion to stand."
19. In realization of this requirement, the Exparte Applicant has sought to amend the Chamber Summons dated 5th November 2024, the statement of facts dated 5th November 2024 and the substantive Notice of Motion dated 7th November 2024;
20. Once leave has been applied for, it is granted on the specific grounds specified in the application for leave and/or which were contained in the statement of facts, but Order 53 Rule 4(2) of the Civil Procedure Rules allows for the Statement of Fact to be amended upon an application. Order 53 Rule 4(2) provides, thus,
- "The High court may on the hearing of the motion allow the said statement to be amended, and may allow further affidavits to be used if they deal with new matter arising out of the affidavits of any other party to the application; and where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he shall give notice of his intention and of any proposed amendment to his statement, and shall supply on demand copies of such further affidavit,"
21. It follows therefore that the Exparte Applicant could procedurally move the court to allow for Amendment of the statement of fact as well as the Substantive Notice of Motion as he did but could not seek to amend the Chamber Summons which had granted leave; as that Chamber Summons would be spent once leave is granted.
22. Having found that the relief in the draft Amended Notice of motion, being ceortari, as the same as in the chamber summons that granted leave and having found that the Exparte Applicant seeks to amend both the statement of fact and Notice of Motion which I have found to be permissible and procedurally as per Order 53(4) (2) and the decision in the case of Exparte Jeff Koinange and 11 others and having found no prejudice will be occasioned to the respondents, the court finds thus that there is merit in the application.
23. On what reliefs ought to issue, the court thus allows in part prayer 1 of the application, to the extent that leave is granted to the Exparte Applicant to amend the statement of facts dated 5th November 2024 and the notice of motion dated 7th November 2024.
24. The Chamber Summons dated 5th November 2024 having achieved its objective of seeking leave to commence Judicial Review proceedings is therefore spent and cannot be amended, and leave to amend the same is denied.
25. The Exparte Applicant to file the Amended statement of facts and Notice of Motion within 21 days from today.
26. The Respondents to file and serve their Replying affidavit within 21 days after service of the Amended Notice of Motion.
27. Mention on 18.03.2026, for further directions.



28. Costs shall be in the cause.

29. Orders accordingly.

DATED AT KILGORIS THIS 29TH DAY OF JANUARY, 2026.

HON. M.N. MWANYALE.

JUDGE.

In the presence of:

CA – Sylvia/Sandra/Clara.

Ms. Muthoni holding brief for Mr. Michuki.

Mr. Moinket for 2nd and 3rd Respondent.

Ms. Njuguna for 1st Respondent.

