



**Wanjehia v Okoth & Kiplagat Advocates (Cause E857 of 2024)  
[2026] KEELRC 217 (KLR) (28 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 217 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E857 OF 2024  
CN BAARI, J  
JANUARY 28, 2026**

**BETWEEN**

**CATHERINE WANJA WANJEHIA ..... APPLICANT**

**AND**

**OKOTH & KIPLAGAT ADVOCATES ..... RESPONDENT**

**RULING**

1. This ruling relates to the Claimant/Applicant's Chamber Summons application dated 22<sup>nd</sup> September 2025, brought under Order 1 Rule 10 and Order 8 Rule 5 of the Civil Procedure Rules. The Applicant seeks orders THAT: -
  - i. Spent
  - ii. The Applicant be granted leave to amend her plaint as set out in the draft amended plaint annexed thereto.
  - iii. This court be pleased to grant an order to amend the plaint, thereby substituting the Respondent with its proprietors, to allow the regularization of the party position.
  - iv. The draft amended plaint attached to the application be deemed as duly filed and served, upon payment of the requisite court fees
  - v. Costs be in the cause.
2. The application is supported by grounds on the face and the supporting affidavit of Catherine Wanja Wanjehia, the Applicant herein.
3. Applicant states that at the institution of the suit, the proprietors who own and operate the Respondent business were not included in the matter and has since learned that the Respondent



- intends to transform into a limited liability partnership and change its name, making it imperative that the proprietors be joined to safeguard the integrity and enforceability of any judgment.
4. She avers that the inclusion of the proprietors will ensure that all issues arising from the claim are fully addressed, as the Respondent is a business carried on by the Intended Respondents.
  5. It is her case that the proposed amendments are therefore necessary to present the true position before this Honourable Court, facilitate a fair and just determination of the dispute, and will not occasion any prejudice to the parties, but will enable the Court to effectively determine the real issues in controversy between the necessary parties.
  6. The Respondent opposed the application vide grounds of opposition dated 14<sup>th</sup> October, 2025.
  7. The Respondent contends that the Applicant's application is incompetent, misconceived, and bad in law as it is brought under the Civil Procedure Rules, which are inapplicable before this Honourable Court.
  8. The Respondent further states that the application constitutes an abuse of the Court process since, under Order 30 Rule 1 of the Civil Procedure Rules, partners in a firm may be sued in the firm's name, and there is therefore no necessity to amend the claim to include the individual partners.
  9. Parties were directed to canvass the application by way of written submissions. The Applicant filed submissions; the Respondent did not.

### **The Applicant's Submissions**

10. The Applicant contends that the application is rightfully before this court as the provisions of the Civil Procedure Rules in which it is anchored do not offend or contradict the Employment and Labour Relations Court (Procedure) Rules. She had reliance in the case of *Omari v Sendwave Limited* [2024] KEELRC 13540 (KLR), for the holding that: -

“It is apparent that not only the rules of this Court, but also the Civil Procedure Rules grant this Court wide discretion in determining an application to amend pleadings... unless there is a clear impediment due to prejudice to the other party.”
11. It is the Applicant's further submission that the Respondent's objection is anchored on a narrow and technical interpretation of procedure and seeks to elevate form over substance, allowing their argument to further dim the spirit of Article 159(2)(d) of *the Constitution* that directs courts to administer justice without undue regard to procedural technicalities.
12. The Applicant submits that Order 30 Rule 1 of the Civil Procedure Rules uses the term “may” in reference to suing partners of a law firm, which means it is couched in discretionary rather than mandatory terms, contrary to what the Respondents want this court to believe.
13. The Applicant submits that it has demonstrated through her affidavit that the Respondent is contemplating a change of name or transformation into another form of business or partnership, which concern is expressly stated in her supporting affidavit and if by any chance the Respondent restructures its operations while this suit is pending, the enforceability of any eventual judgment could be compromised and/or defeated entirely.
14. She submits that it is imperative, in the interests of justice, that the proprietors be joined to safeguard the integrity of the Court's eventual orders.



15. The Applicant finally submits that the joinder of parties is not only lawful and necessary, but is essential for the proper and effective adjudication of the present dispute, and prays that her application is allowed.

### **Determination**

16. The following issues arise for my determination:
- i. Whether the application is incompetent for being brought under the Civil Procedure Rules.
  - ii. Whether the Applicant has satisfied the threshold for amendment of pleadings and joinder/substitution of parties.

### **Whether the application is incompetent for being brought under the Civil Procedure Rules**

17. The Respondent's contention is that the application herein is incompetent for being anchored on the Civil Procedure Rules, which it alleges are inapplicable before this Court.
18. In *Omari v Sendwave Limited* [2024] KEELRC 13540 (KLR), also cited by the Applicant, the Court held that: -

“Not only the Rules of this Court but also the Civil Procedure Rules grant this Court wide discretion in determining applications for amendment of pleadings, unless there is a clear impediment due to prejudice to the other party.”

19. Similarly, in *Nicholas Kiptoo Arap Korir Salat v IEBC & 7 Others* [2014] eKLR, the Supreme Court emphasized that procedural rules are handmaidens of justice and should not be applied mechanistically to defeat substantive justice.
20. Accordingly, this Court finds that reliance on Order 1 Rule 10 and Order 8 Rule 5 of the Civil Procedure Rules does not render the instant application incompetent, as those provisions do not offend the ELRC Rules and are consistent with the Court's mandate to dispense substantive justice.

### **Whether the Applicant has satisfied the threshold for amendment of pleadings and joinder/substitution of parties**

21. The principles governing amendment of pleadings are well settled. In *Eastern Bakery v Castelino* [1958] EA 461, where the Court held that:-

“Amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side.”

22. Likewise, in *Central Kenya Ltd v Trust Bank Ltd* [2000] eKLR, the Court of Appeal stated that amendments should be allowed where they are necessary to determine the real questions in controversy.
23. Order 1 Rule 10(2) of the Civil Procedure Rules empowers the Court at any stage of the proceedings to add or substitute parties whose presence is necessary for the effective and complete adjudication of the dispute.
24. The Applicant has deponed, without rebuttal by affidavit, that the Respondent is a business operated by proprietors who were not initially named, and that the Respondent is contemplating a change of name and/or restructuring into a limited liability partnership, which may compromise the enforceability of any judgment issued by this Court.



25. In *Amon v Raphael Tuck & Sons Ltd* [1956] 1 All ER 273, the Court held that a party may be joined if their presence is necessary to ensure that all matters in dispute are effectually and completely determined.
26. In light of the foregoing, I am persuaded that the proprietors sought to be joined are the real persons behind the Respondent business and their inclusion will clarify the true party position and secure the efficacy of the Court's eventual orders.
27. In conclusion, I find the application merited and grant the following orders: -
- a. That the Applicant be and is hereby granted leave to amend her claim as set out in the draft annexed hereto.
  - b. That the amended claim shall be deemed as duly filed and served upon payment of the requisite court fees.
  - c. That the costs of the application shall be in the cause.
28. It is ordered.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
28<sup>TH</sup> DAY OF JANUARY, 2026.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Molla Ahenda present for the Claimant

Mr. Omondi present for the Respondent

Ms. Esther S -C/A

