

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL CASE NO. 189 Of 2015

KENNEDY NYAUNDI.....PLAINTIFF/APPLICANT

-VERSUS-

TREVVY JAMES OYOMBRA.....DEFENDANT/RESPONDENT

RULING

1. For determination is Kennedy Nyaundi (*hereafter the Plaintiff/Applicant*) **motion dated 24/06/2025** filed pursuant to **Section 1A, 1B, 3 & 3A** of the **Civil Procedure Rules (CPR)** and **Order 8 Rule 3, 5 & 8** of the **Civil Procedure Rules (CPR)** seeking as against **Trevvy James Oyombra** (*hereafter the Defendant/Respondent*) the following orders-;
 - a) *Spent*
 - b) *That this Honorable Court be pleased to grant leave to the Plaintiff to amend his plaint dated 21/05/2015 in terms of the draft amended plaint*
 - c) *Upon grant of leave hereinabove, the draft Amended Plaint be deemed as filed upon payment of the requisite Court fees.*
 - d) *The costs of this application be borne by the Defendant.*

2. The **motion is premised on grounds** found at the supporting affidavit sworn by **Kennedy Nyaundi, on 25/06/2025** who cites being conversant with the facts in issue.

3. On his part, **Trevy James Oyombra** opposes the Plaintiff's motion by way of a **replying affidavit dated 15/07/2025**, who equally cites being conversant with the facts in issue and thus competent to depose.
4. Despite directions on disposal on the Plaintiff's motion by way of written submissions, only the Defendant complied. That said, the Court has duly considered the rival affidavit material on record and the Defendant submissions, to wit, the Court postulates that the issue(s) presenting for determination as can be garnered from the rival material **concerns -:**
 - a) ***Whether the Court ought to grant the Plaintiff leave to amend his plaint dated 21/05/2025?***
 - b) ***Who ought to bear the costs of the motion?******Whether the Court ought to grant the Plaintiff leave to amend his plaint dated 21/05/2025?***
5. In presenting the instant motion the Plaintiff among other provisions of the CPA cites **Section 3A** which specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court"", to wit, this Court's inherent powers was judiciously addressed by the Court of Appeal in **Rose Njoki King'au & Micugu Wagathara v Shaba Trustees Limited & City Council of Nairobi [2018] KECA 216 (KLR)** and requires no restatement.
6. Alongside the above provision, the Plaintiff has equally relied on **Order 8 Rule 3 & 5** of the **CPR. Order 8 Rule 3 provides** that-;

(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 subrule if it thinks just so to do.

(3) An amendment to correct the name of a party may be allowed under subrule (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 subrule (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 subrule (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.

7. Whereas **Rule 5** of the same **Order** provides -;

(1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and, on such terms, as to costs or otherwise as are just.

(2) This rule shall not have effect in relation to a judgment or order.

8. The purport of the latter provision is echoed in **Section 100** of the **CPA** wherein it can be deduced, the kernel of amendment of pleadings, serves the purpose of aiding the Court to determine the real questions or issues in controversy as between disputing parties.

9. Here, the Court concurs with the rendition in **Institute for Social Accountability & another v Parliament of Kenya & 2 others; Commission for the Implementation of the Constitution (Interested Party) [2014] KEHC 7356 (KLR)**

wherein the Court addressed itself to the objective of amendment of pleadings as follows-;

“the object of amendment of pleadings is to enable the parties to alter their pleadings, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings”.

10. The same Court went on to render itself to the effect-;

“a party that wishes to amend its pleadings at any stage of the proceedings may do so with leave that the court will normally allow parties to make such amendments as may be necessary..... to avoid a multiplicity of suits, provided there has been no undue delay, or new or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that affected and that the amendment can be allowed without an injustice to the other side”.

11. In addressing the instant application this Court is equally mindful of wording of **Order 8 Rule 3(2)** of the **CPR**. That said, having duly considered the cited authorities and legal provisions underpinning the subject of amendments, as stated above, it can be deduced therefrom that this Court is empowered to allow amendments to assist it determine the real issues in controversy

in a suit, if there is an omission by whatever reasons, if leave is sought upon application or *suo moto*, if the need and necessity to amend arises, proceed to allow the amendments.

12. The Court in **Institute for Social Accountability** (supra) observed that an amendment ought to be allowed even if the cause of action changes so long as the facts relied upon for the amendments sought are the true facts, the parties finally intend to rely on. Thus, the Court is clothed with wide powers to allow amendment of pleadings for a fair and just hearing to be conducted in terms of **Article 50** of the **Constitution** as well as under **Sections 1A, 1B & 3A of the CPA**, towards facilitating the expeditious, proportionate and affordable resolution of civil disputes for the just determination of the proceedings and to avoid multiplicity of suits.
13. By his affidavit material in support of the motion, the Plaintiff deposes that his suit as instituted is premised on a cause of action founded on defamation in which the Defendant is alleged to have published defamatory material that was exhibited in Southwark Crown Court UK in the case of **Regina v Christopher Smith, Nicholas Smith, Timothy Forrester, Abdirahman Omar & Smith & Ouzman Limited**. That in support of his claim, as against the Defendant, he instructed a legal firm situated in England to assist him in obtaining the certified Court copies of the proceedings and judgment in the aforestated case. And as a consequence, incurred expenses amounting to £8,400 as legal fees. The intended amendment seeks to include the claim of £8,400, as special damages,

whereas the latter is not a new or inconsistent cause of action as the damages stem from the same set of facts.

14. The Defendant assails the amendment by deposing that the Plaintiff's cause of action founded on defamation, as pleaded, purportedly occurred in 2014, to wit, the instant suit as filed in 2015 complied with the statutory limitation period under **Section 4(2)** of the **Limitation of Actions Act**. That the intended amendment, is nearly ten (10) years after the suit was filed and seeks to introduce a fresh claim for special damages in the sum of £8,400 which was never mentioned in the plaint as filed or at any stage of proceedings.
15. He goes on to state that the claim of special damages amounts to a fresh cause of action introduced long after the expiry of twelve (12) month limitation period contrary to **Section 4(2)** of the **Limitation of Actions Act**, as such the claim sought to be introduced, is time barred. That the proposed amendment is therefore an abuse of the Court process, intended to unjustly harass with a stale and time barred claim contrary to the principles of natural justice.
16. Upon the above, the Court has taken the liberty of perusing the draft-amended plaint (**Annexure KN4**) and the intended amendments that the Plaintiff wishes to introduce. The Court notes that from the plaint, as initially filed, the Plaintiff pleaded that the Defendant published defamatory material that was exhibited in Southwark Crown Court UK in the case of **Regina** (supra), which material forms, in part, the basis of his case as against the Defendant.

17. The Court further notes from (**Annexure KN1, KN2(a), (b) & (c) and KN3**), that the Plaintiff engaged and paid £8,400, to the UK law firm of Seladore Legal, to obtain on his behalf, evidence and documentation pertaining to the UK Criminal trial of **Regina** (supra) which took place in 2014, in support of the instant defamation proceedings as against the Defendant.
18. Consequently, the gist and my understanding of the intended amendment is that the Plaintiff seeks to introduce expenses, as special damages, expended towards obtaining evidence in support of defamation claim as against Defendant. The evidence sought from the UK relates to the defamatory material that was exhibited in Southwark Crown Court UK, which in part forms the basis of the Plaintiff's claim. But did it have to take ten years to obtain the said evidence?
19. The doctrine of laches is defined at Black's Law Dictionary, thus the unreasonable delay in pursuit of ones right of claim. Such is almost always an equitable one and the doctrine seeks to minimize chances of prejudice on the party against whom the relief is sought...For such doctrine to succeed , it must be shown that the delay was unreasonable, neglect on the part of the claimant to assert his/her right and the other person against whom the claim is made will suffer damage as a result.....
20. That said, in the Court's view, the Applicant has not provided persuasive grounds for the ten years delay in coming to court, that the Defendant will highly be prejudiced by the introduction of the alleged evidence. The court in the case of **James Kanyua**

v Mohammed Nuru Kariuki & another (2025) KLR while discussing the doctrine held that the doctrine of laches applies where there is unexplained and inordinate delay. Likewise, the Maxim the “*Equity aids the vigilant*”; this does not resonate well with the Applicants conduct. In such a situation, the court finds that in a defamation case which by statute, has strict timelines to file the suit, the Defendant who was dragged to court by the Plaintiff would indeed continue to suffer more damage and loss to defend the would be a fresh claim against him more than ten years after he filed his defence.

21. This reasoning is in tandem with the holding in the **Institute for Social Accountability case (supra)** whereas the court has power to allow amendments to pleadings; the application ought to be made without undue delay.
22. **Sections 1A, 1B & 3A of the CPA** does not aid a party who has been indolent and in violation of the objectives of the above provisions, particularly in the efficient disposal of the courts business and timely disposal of the proceedings at a cost affordable by the respective parties. **That said, the court finds no merit in the Applicant’s motion dated 24/06/2025. It is dismissed with costs in the cause.**

Orders Accordingly.

Delivered Dated and Signed at Nairobi this 26th day of February, 2026.

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JANET MULWA.

JUDGE

ORIGINAL