



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MOMBASA

COUNTY COURT NAME: MOMBASA ENVIRONMENT AND LAND COURT

CASE NUMBER: ELC 316/2014

GARISSA MATTRESSES LIMITED VERSUS MARGARET WALOGWA WAMWANDU AND 5 OTHERS

DIRECTIONS

This is the ruling delivered on 20th February 2026.

RULING

The defendants have come to this court under the provisions of Sections IA, 1B, 3A, 99 and 100 of the Civil Procedure Act, Cap 21, Order 8 Rule 5 and order 51 Rule 1 of the Civil Procedure Rules 2010, and all other enabling provisions of the law seeking an order that the Honourable Court be pleased to arrest, stay, or suspend the delivery of the Ruling in the Notice of Motion dated 3RD March 2025 scheduled for delivery on 19th February 2026 pending the hearing and determination of this application.

Ultimately, the defendants seek orders that they be granted leave to amend the Notice of Motion dated 3rd March 2025 nunc pro tunc to correct clerical errors, inadvertent omissions, and mistakes apparent on the face of the record. THAT the amended Notice of Motion be deemed to have been properly filed and served upon payments of requisite fees. That costs of this application be costs in the cause.

The application is based on the grounds that the Notice of Motion dated 3rd March 2025 which is pending ruling is riddled with grave, obvious typographic errors and omissions made by the typist which render the resulting prayer unclear and does not disclose the intended orders therefore making the Application handicapped and brutam filmen. That the errors are clerical mistakes apparent on the face of the record particular in prayer No. iii where the word "stay" was omitted and which has rendered the Application vague.

That there is need that the Applicant is allowed to amend the Application for ends of justice to be met and that Section 100 of the Civil Procedure Act allows the Court to correct clerical mistakes in pleadings at any stage including after judgments, rulings, or orders.

The applicant contends that it is in the interest of justice that the Applicant be allowed to correct these grave omissions to avoid litigation and to ensure the Court acts on accurate pleadings. That no prejudice will be suffered by the Respondent if these orders are granted, as this is to ensure the



substantive issues are heard on merit and that it is imperative to exercise the Court's discretion under the "Oxygen o Principle to avoid over-reliance on technicalities that would result in a miscarriage of justice. Which application is supported by the Affidavit of Joyce Chesaro an advocate of the High Court of Kenya. She reiterates the grounds of the application.

The gravamen of the applicant's submissions is that section 100 of the Civil Procedure Act allows amendment of a notice of motion. The applicant further relies on Article 159 of the Constitution of Kenya 2010. The applicant urges this court to apply the Oxygen Principle and to grant the application. Mrs Chesaro, learned counsel for the applicant argues that section 1A and 1B gives this court the discretion to exercise it judicial powers to do justice.

Mr Oluga, learned counsel for the respondent argues that a notice of motion is not a pleading and therefore it cannot be amended. He cites the decision by Justice Sifuna in the case of Jaribu Credit where he held that a notice of motion cannot be amended.

I have considered the application and the rival submissions and do find that a notice of motion is not a pleading submitted by Mr Oluga learned counsel for the respondent and therefore cannot be amended as a pleading, however, I do agree with Mrs Chesaro that a notice of motion can be amended as a proceeding before the court.

In the case of Peter M. Echaria v. Priscilla N. Echaria (1998) eKLR . The Court of Appeal observed:- "We agree that the notice of motion is defective but the defect is curable, and, for that reason, and ms. Karua having applied for leave to amend the notice of motion, we grant leave for the respondent to amend the notice of motion so as to comply with the requirements of Rule 42(1) of the Rules of the Court."

In Fredrick Mwangi nyaga v. Garam Investments & Another (2013) e KLR at page 5 and 6 Havelock J., stated:-

"with respect, I do not consider that learned counsel for the defendant has read the above provision entirely. The second sentence after the word "or" allows the correction of any defect or error in any proceedings. In my view, a Notice of Motion is part of the proceedings of a suit. I do not consider that the power to amend a proceeding is confined solely for the purposes of determining the real question of controversy between the parties. As a consequence, I agree with counsel for the Plaintiff when he says that this provision of Order 8 rule 5 allows this court to consider an application for amendment to (in this case), the plaintiff's Notice of Motion dated 14th June, 2013. I believe that the decision in Echaria v. Echaria case (supra) is binding upon this court with the slight reservation that the application to amend the Notice of Motion before that Court was brought under the Court of appeal Rules. However, I do not consider that the provision under which the applicatoion is brought would make any difference to my finding as above. As a consequence of all the above, I find that

although this court has power to allow an amendment to the plaintiff's said notice of motion dated 14th June, 2013 under the provisions of Order 8 Rule 5 as well as Section 100 of the Civil Procedure Act, the fact that the plaintiff has breached Rule 9 as I see it, his only option is withdraw the same and file a fresh application."

In determining the question as to whether an application may be amended, I am persuaded by the sentiments of Havelock J., cited hereinabove and those of Omondi J., in the case of Samwel Barkoiyet Kangogo & 3 others vs. Daniel Ndung'u (2009) eKLR where she stated:-

"My considered view is that the court has a duty to ensure the ends of justice are met and that Section 3A gives this court wide discretion for that purpose... I have a duty to put a stop to such

mischief and rule that the misheading of the application to read chamber summons instead of notice of Motion causes no prejudice to the respondent and under section 100 Civil Procedure Act, I amend the title to read Notice of Motion."

Having determined that this court has power under Sections 3A, 100 and Order 8 Rule 5 of the



Civil Procedure Act and Rules respectively, the issue to determine is whether there is any reasonable



cause for denying the amendment herein sought. The respondent has not demonstrated any prejudice to be suffered if amendment is granted.

The upshot of the above is that the application for amendment of the notice of motion dated 3rd March 2025 is granted. The same to be filed within 2 days.

RULING DATED, SIGNED AND DELIVERED AT MOMBASA VIRTUALLY ON THE 20TH FEBRUARY 2026.

SIGNED BY/FOR:
HON. JUSTICE ANTONY O. OMBWAYO



THE JUDICIARY OF KENYA. MOMBASA
ENVIRONMENT AND LAND COURT
ENVIRONMENT AND LAND COURT
DATE: 2026-02-24 07:57:16

