

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CIVIL CASE NO. E107 OF 2021

**CHUNA SAVINGS AND CREDIT
CO-OPERATIVE SOCIETY LTD**
.....PLAINTIFF/APPLICANT

VERSUS

THE UNIVERSITY OF NAIROBI
DEFENDANT/RESPONDENT

RULING

Introduction

1. This ruling concerns the Plaintiff's Notice of Motion dated 27th June 2025 seeking leave to amend its Plaint dated 24th February 2021, in the manner set out in the draft amended Plaint annexed to the application.
2. The Applicant's case is that it instituted this suit to recover Kshs. 317,766,008/=, representing accrued interest arising from the Respondent's alleged failure to remit deductions

made from its employees' emoluments. The claim is grounded in Section 35(1) of the Cooperative Societies Act, which obliges employers to remit deductions within seven days, failing which a compound interest of 5% per month is chargeable.

3. The Applicant contends that the original Complaint did not sufficiently clarify that the sum claimed was specifically for accrued interest, nor did it provide full particulars demonstrating how that figure was reached.
4. According to the Applicant, the proposed amendments seek to clearly specify the nature of the claim as accrued interest pursuant to the statute, provide the necessary particulars to clarify, and to ensure that the real issues in controversy are determined on their merits.
5. The Applicant further submitted that the application has been made in good faith, and that the delay in seeking amendment was occasioned by ongoing out-of-court settlement negotiations which ultimately did not bear fruit.
6. The application is opposed by the Respondent through a replying affidavit sworn on 29th August 2025 by Michael Kitsao Menza, the Defendant's Director of Finance. The Respondent asserts that the proposed amendments introduce a new cause of action, are premature, offend

statutory provisions, and will occasion prejudice that cannot be remedied by an award of costs.

7. The Respondent further avers that it is a public institution dependent on government capitation, which has been drastically reduced since the 2017/2018 financial year, thereby constraining its ability to meet even basic salary obligations.
8. It is contended that no deductions were in fact made from employees' emoluments, and therefore the provisions of Section 35(1) of the Act on interest for unremitted deductions are not applicable.
9. The Respondent also refers to ongoing negotiations relating to a proposed formal tenancy arrangement, under which the Plaintiff would utilize the Respondent's premises in lieu of pursuing the monetary claim.
10. It is therefore the Respondent's position that both the suit and the proposed amendments are premature, given its financial predicament and the pending negotiations; that the amendments introduce a new cause of action, defeat accrued defences including limitation, and have been brought in bad faith.
11. The application was canvassed by way of written submissions. The Applicant filed its submissions dated 1st

October 2025, whilst the Respondent's submissions are dated 15th October 2025.

Analysis and Determination

12. The Court has carefully considered the application, the affidavits on record, and the rival written submissions. The sole issue for determination is whether the Plaintiff should be granted leave to amend its Plaint as sought.

13. The law governing amendment of pleadings is settled. **Order 8 Rules 3 and 5 of the Civil Procedure Rules** grant the Court wide discretion to allow amendments at any stage of proceedings. The guiding principles were articulated in **Eastern Bakery v Castelino (1958) EA 461**, where the Court held that amendments should be freely allowed if they can be made without injustice to the other party.

14. In **St. Patrick's Hill School Ltd v Bank of Africa Kenya Ltd [2018] eKLR**, the Court affirmed that the overriding consideration is whether the amendment is necessary for the just determination of the dispute.

15. Similarly, in **Joseph Ochieng & Others v First National Bank of Chicago**, *Civil Appeal No. 149 of 1991*, the Court of Appeal underscored that amendments may be allowed at any stage to facilitate determination of the real questions in controversy, provided no prejudice is caused which cannot be compensated by costs.
16. In the present case, the Court is satisfied that the proposed amendments do not introduce a new or distinct cause of action, nor do they alter the fundamental character of the suit. They arise from the same factual matrix, namely, the alleged failure to remit SACCO deductions, and merely seek to clarify the statutory basis and particulars of the claimed accrued interest.
17. The Respondent has not demonstrated any prejudice that cannot be adequately compensated by an award of costs. The suit is still at a preliminary stage, and the hearing has not commenced. The Respondent will have sufficient opportunity to amend its Defence and fully respond to the clarified claim.
18. In keeping with **Article 159(2)(d) of the Constitution**, courts are enjoined to administer justice without undue regard to procedural technicalities. Denying the Applicant leave to amend in these circumstances would

unduly fetter the Court's duty to determine the dispute on substantive merits.

19. The Respondent's arguments regarding its financial challenges, government capitation, and whether deductions were actually made constitute substantive defences. These matters are more appropriately addressed at the trial and do not provide a basis for denying an amendment at this interlocutory stage.

20. In the premises, the Court finds merit in the application and allows it on the following terms:

- i. The draft Amended Plaintiff annexed to the application is deemed as duly filed upon payment of the requisite fees.
- ii. The Plaintiff shall serve the Amended Plaintiff within fourteen (14) days from the date of this ruling.
- iii. The Defendant is granted leave to file and serve an Amended Defence within fourteen (14) days of service.
- iv. Costs of this application shall abide the outcome of the main suit.

21. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAIROBI
THIS 10TH DAY OF APRIL 2026**



HON. MR. JUSTICE MOSES ADO
Judge of the High Court

In the presence of: -

C/A - Moses

Kamwara..... for the Applicant

Omondi..... for the Respondents