



**Kazuri 2000 Limited v Kobe Tough Limited (Case E292 of 2022)
[2026] KEHC 6002 (KLR) (Commercial and Tax) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 6002 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CASE E292 OF 2022
PM MULWA, J
APRIL 30, 2026**

BETWEEN

KAZURI 2000 LIMITED PLAINTIFF

AND

KOBE TOUGH LIMITED DEFENDANT

RULING

1. The application before the Court is the Notice of Motion dated 7th October 2025, in which the Plaintiff seeks leave to amend the Plaintiff dated 27th July 2022.
2. The background to the application is fairly straightforward. On 24th July 2024, when the Plaintiff called its first witness (Pw1), a number of documents in the Plaintiff's bundle, specifically documents Nos. 2, 4 and 30–37, were, by consent, expunged from the record for want of a certificate. Later, on 9th July 2025, counsel for the Plaintiff sought to have those documents readmitted. The Court directed that a formal application be filed for that purpose. Instead of doing so, the Plaintiff filed the present application seeking to amend the plaintiff.
3. The Plaintiff's position is that the proposed amendments are necessary for the just determination of the dispute.
4. The Respondent opposes the application through the Replying Affidavit of Peter Ndung'u, sworn on 8th December 2025. It is deposed that the application is frivolous, an abuse of the court process, and made in bad faith, an afterthought made to cure the weakness in the Plaintiff's case. He argues that the suit has been pending since 2022, has substantially progressed to the hearing stage, and that the Plaintiff's witness has already been cross-examined. He further avers that despite directions by the Court to file a formal application for reinstatement of documents, the Applicant instead filed the



present application seeking to amend the plaint, which is said to be an afterthought. The delay of over three years in bringing the application is termed inordinate and unexplained.

5. He avers that the proposed amendments seek to introduce a new and inconsistent cause of action shifting from breach of copyright to breach of trade secrets and confidence, thereby fundamentally altering the nature of the suit. He avers that allowing the amendments would prejudice the Respondent and urged the court to find the application is devoid of merit and dismiss the same.

Analysis and determination

6. I have considered the application, the affidavits on record, and the rival arguments. The issue for determination is whether the Plaintiff ought to be granted leave to amend the plaint as sought.

7. The general principle is that the Courts' discretion to amend pleadings at any stage of the proceedings is wide and unfettered, except that it should be exercised judicially and upon the defined principles. Section 100 of the [Civil Procedure Act](#) provides that:

“The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”

8. Order 8 Rule 3 of the Civil Procedure Rules provides for amendments of proceedings and provides as follows;

“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 sub rule (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 sub rule if it thinks just so to do.

3 ...

4 ...

5. An amendment may be allowed under sub rule (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.”

9. The above provision gives the Court wide discretion to allow amendments at any stage of the proceedings, so long as the amendment is made in good faith and is necessary for determining the real issues in controversy.

10. The discretion is not exercised in a vacuum. The Court must consider, among other things, the stage of the proceedings, the nature of the proposed amendments, and whether any prejudice will be occasioned to the other party.



11. In this case, the suit has already progressed to the hearing stage. The Plaintiff has testified and has been cross-examined. More importantly, the documents that appear to have prompted this application were expunged by consent. On 24th July 2024 when the Plaintiff later sought to reintroduce them, the Court gave clear directions on the proper course to take. Those directions were not followed.
12. Instead, the Plaintiff has come back with an application to amend the plaint. In my view, that conduct is not accidental. It suggests an attempt to sidestep the earlier order of the Court regarding the expunged documents.
13. The proposed amendments are also not minor. They seek to shift the claim from breach of copyright to a claim based on trade secrets and breach of confidence. That is not a mere clarification, it is a substantive change that introduces a different cause of action, supported by different facts.
14. I agree with the Respondent that this application appears to be an afterthought, likely prompted by gaps that became evident during the hearing. Courts must be careful not to allow parties to reshape their cases midway through proceedings in order to overcome evidentiary difficulties.
15. In the circumstances, I find that the proposed amendments are not made in good faith and would occasion prejudice to the Respondent
16. Consequently, the Notice of Motion dated 7th October 2025 is without merit and is hereby dismissed with costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL 2026.

P.M. MULWA

JUDGE

In the presence of:

Mr. Mahinda for Plaintiff/Applicant

Mr. Otieno for Defendant/Respondent

Court Assistant: Lispa

