



**Mineral Masters Limited v Simple Pay Capital Limited (Commercial Case E511 of 2022)
[2026] KEHC 5577 (KLR) (Commercial and Tax) (16 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5577 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E511 OF 2022**

MA OTIENO, J

APRIL 16, 2026

BETWEEN

MINERAL MASTERS LIMITED PLAINTIFF

AND

SIMPLE PAY CAPITAL LIMITED DEFENDANT

RULING

Introduction

1. This Ruling concerns the Plaintiff/Applicant's Notice of Motion dated 29th October 2025 seeking, principally, leave to amend its Plaint.
2. The application is expressed to be brought under Order 8 Rule 3(1), Order 51 Rule 1 of the Civil Procedure Rules, and Sections 1A, 1B, and 3A of the *Civil Procedure Act*. It is supported by the affidavit of Philip Ndegwa Owino, a director of the Plaintiff, sworn on the same date.
 - i. The Applicant seeks the following key orders:
 - ii. Leave to amend the Plaint dated 19th December 2022;
 - iii. Liberty to the Defendant to file an amended Defence; and
 - iv. Costs in the cause.
3. The application is premised on the grounds that since the filing of the suit, material developments have arisen in the loan relationship between the parties, including the takeover of the charge over the suit property by Bank of Africa (Kenya) Limited; Payment of Kshs. 19,998,799.75 by the said bank to facilitate discharge of the charge; aggregate payments allegedly totaling Kshs. 47,138,799.75 towards the loan facility; and alleged unlawful escalation of interest contrary to Section 44A of the *Banking Act*.



4. According to the Applicant, the proposed amendment seeks, inter alia, to introduce these developments, challenge the legality of the interest charged, and claim a refund of alleged overpayments.

Analysis and Determination

5. Having considered the Motion, affidavit, and material placed before the Court, the single issue for determination is “whether the Plaintiff/Applicant has satisfied the legal threshold for grant of leave to amend its Plaint.
6. The law governing amendment of pleadings is well settled. Order 8 Rule 3(1) of the Civil Procedure Rules grants the Court wide discretion to allow amendments at any stage of proceedings.
7. Order 8 rule (3) (5) clearly provides the permissible limits as follows:

“An amendment shall 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.”
8. The guiding principles are equally settled in jurisprudence, including *Eastern Bakery v Castelino* [1958] EA 461, where it was held that amendments should be freely allowed provided they do not occasion injustice to the opposing party.
9. Similarly, in *Central Kenya Ltd v Trust Bank Ltd* [2000] 2 EA 365, the Court emphasized that amendments are intended to enable the Court determine the real questions in controversy between the parties.
10. The Court of Appeal in *Joseph Ochieng & 2 Others Trading as Aquiline Agencies vs. First National Bank of Chicago* [1995] eKLR stated:

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts.”
11. From the material before the Court in the present case, it is not disputed that the original Plaint was filed in December 2022, and that the proposed amendments arise from subsequent events affecting the loan facility.
12. It is evident that the proposed amendments seek to introduce additional facts and reliefs tied to those developments. The Court is therefore satisfied that the proposed amendments are aimed at bringing before the Court the full factual matrix surrounding the dispute.



13. The developments relating to the alleged takeover of the charge, payments made, and the computation of the outstanding loan are, in the view of the Court, central to the dispute.
14. Without such amendments, the Court would be constrained to determine the matter on an incomplete factual foundation. The amendments, therefore, serve the fundamental objective of facilitating a just and effectual determination of the issues in controversy.
15. In any event, the proposed amendments do not introduce a wholly new or inconsistent cause of action. Rather, they elaborate on and refine the existing dispute arising from the loan facility between the parties.
16. Further, the Respondent retains the right to amend its Defence and respond to the new matters. No prejudice has been demonstrated that cannot be compensated by costs.
17. On the contrary, refusal to allow the amendment would occasion prejudice to the Applicant by locking it out from presenting its full case, particularly in light of the alleged subsequent payments and statutory violations.
18. Finally, there is no indication of bad faith, undue delay, or abuse of process. The explanation that the amendments are necessitated by subsequent developments is both plausible and consistent with the record.
19. The upshot of the foregoing analysis is that the Court is persuaded that the application meets the threshold for amendment of pleadings. Accordingly, the Court makes the following orders:
 - i. Leave is hereby granted to the Plaintiff/Applicant to amend its Complaint dated 19th December 2022 in terms of the annexed draft.
 - ii. The amended Complaint shall be filed and served within 14 days from the date hereof.
 - iii. The Defendant/Respondent shall have 14 days from the date of service to file and serve an amended Defence, if it so wishes.
 - iv. Costs of the application shall be in the cause.
20. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAIROBITH DAY OF APRIL 2026

HON. MR. JUSTICE MOSES ADO JUDGE OF THE HIGH COURT

In the presence of: -

C/A – Moses

Ms. Cherono..... for the Plaintiff

Ms. Munjogu..... for the Defendant

3 | Page

