



REPUBLIC OF KENYA



KENYA LAW
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**Okul v Kasbondo Aim Dairy Co-operative Society (Appeal
E040 of 2024) [2025] KEELRC 1083 (KLR) (3 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1083 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
APPEAL E040 OF 2024
NZIOKI WA MAKAU, J
APRIL 3, 2025**

BETWEEN

CAROLINE AUMA OKUL APPELLANT

AND

KASBONDO AIM DAIRY CO-OPERATIVE SOCIETY RESPONDENT

*(Being an appeal from the Ruling of Hon. S.O. Ongeru (SPM)
in Oyugis ELRC No. 1 of 2024 delivered on 12th July 2024)*

JUDGMENT

1. The Appellant filed an application dated 14th May 2024 before the Magistrate seeking to amend the name of the Respondent from "kabondo Aim Dairy Co-operative Society" To "kasbondo Aim Dairy Co-operative Society Limited." She contended that the amendment was necessary to correct a typographical error. However, in a Ruling delivered on 12th July 2024, the Magistrate dismissed the application, finding that allowing such an amendment after judgment would be prejudicial to "Kasbondo Aim Dairy Co-operative Society."
2. Dissatisfied with the Ruling the Appellant filed a memorandum of appeal dated 16th August 2024 contending that:
 1. The Learned Magistrate erred in law and fact by holding that the amendment to correct the name of the Respondent from Kabondo Aim Dairy Co-operative Society To Kasbondo Aim Dairy Co-operative Society Limited would prejudice the Respondent. The Respondent was fully aware of the proceedings and had been properly served and participated in the case under the correct name "Kasbondo Aim Dairy Co-operative Society Limited"
 2. The Learned Magistrate misapprehended the principles governing judicial discretion in allowing amendments post-judgment, particularly in relation to correcting clerical or



typographical errors. The intended amendment was minor and aimed at rectifying a typographical mistake without altering the substantive rights or obligations of the parties.

3. The Honourable Court failed to apply the doctrine of substantial justice as stipulated under Article 159(2)(d) of *the Constitution*, which mandates courts to administer justice without undue regard to procedural technicalities. The correction sought was necessary to reflect the actual parties involved and ensure that justice is served on its merits.
 4. The Ruling was inconsistent with previous rulings and established jurisprudence which allows for amendments to correct party names where such correction would not cause any injustice or prejudice to the opposing party. The Respondent had not demonstrated any material prejudice that would result from the amendment.
 5. The Learned Magistrate erred in awarding costs of the application to the Respondent, given that the application was made in good faith to correct a genuine mistake.
3. The Appellant, therefore, sought for:
- i. The appeal to be allowed and the Ruling dated 12th July 2024 to be set aside.
 - ii. An order allowing the amendment of the Respondent's name from "Kabondo Aim Dairy Co-operative Society" To "kasbondo Aim Dairy Co-operative Society Limited" in the original suit and in all related documents.
 - iii. An order that the costs of this appeal and those of the application in the lower court be awarded to her.
4. Subsequently, directions on disposal of the appeal were issued on 27th November 2024. The Appellant filed her submissions on 6th February 2025, while the Respondent filed submissions on 22nd January 2025.

Appellant's Submissions

5. The Appellant submits that the amendment of pleadings to correct errors in party names is permissible at any stage of proceedings. She asserts that such corrections are necessary to achieve justice and prevent substantive issues from being sacrificed on procedural grounds. In support of her position, she cites Section 100 of the *Civil Procedure Act* and Article 159(2)(d) of *the Constitution*. She also refers to the case of *Eastern Bakery v Castelino* [1958] EA 46, which held that amendments should be freely allowed if they do not cause injustice to the opposing party. Further, the Appellant submits that the Respondent is estopped from denying its identity as "Kasbondo Aim Dairy Co-operative Society" since it participated in the proceedings under that name. She references the memorandum of appeal filed on 25th April 2022 and the active participation of its advocates, M/s Bana & Company Advocates. Additionally, she cites the case of *Serah Njeri Mwobi v John Kimani Njoroge* [2013] eKLR, which held that a party cannot dispute facts it has expressly or implicitly accepted through conduct.
6. Consequently, the Appellant submits that without the amendment, she will be deprived of the fruits of her judgment. She contends that the refusal to allow the amendment undermines the principles of fairness, justice, and equity. She urges the court to grant the amendment as prayed.

Respondent's Submissions

7. The Respondent opposes the appeal, submitting that allowing the amendment would amount to condemning an entity that did not take part in the proceedings unheard. It urges the court to uphold the trial court's ruling, emphasizing that it did not participate in the proceedings before the Magistrate.



The Respondent asserts that it is a distinct entity from the Respondent named in the trial court, making the error more than just a typographical one.

8. In support of its position, the Respondent cites the decision in *Elijah Kipngeno Arap Bii v Kenya Commercial Bank* [2013] eKLR, which, citing the case of *Lewar Ventures v Equity Bank (Kenya) Limited* [2022] KEHC 998 (KLR), held that amendments should not affect vested interests or accrued legal rights, nor should they prejudice or cause injustice to the other party. The Respondent further submits that the court became *functus officio* after judgment, and the Appellant had ample time to amend before judgment but failed to do so. It cites the case of *Jacob Ngigi Muiruri v Mbote Stores Limited* [2017] eKLR, where an amendment seeking to introduce a new defendant beyond the statute of limitations was declined, as it was deemed unjust and an unworthy exercise of the court's discretion, especially given the Appellant's failure to verify the accuracy of her pleadings. Finally, the Respondent submits that the amendment does not meet the threshold of an accidental slip or omission under section 99 of the *Civil Procedure Act*, as it goes to the substance of the case. Based on the foregoing, the Respondent urges the Court to dismiss the appeal.
9. The matter for determination is the availability of an amendment to the name of a party after judgment. The Court is of the firm view that the power to amend can be exercised by a court at any stage of the proceedings including the appeal stage. As a general rule the amendment which does not affect the materiality of the matter at hand is permitted. In the case before the Learned Magistrate, the Respondent herein entered appearance as Kasbondo Aim Dairy Co-operative Society Limited. The failure of the Appellant to correct the name did not take away the fact that the Respondent participated in the suit as well as preferring this Appeal. I have no doubt the Respondent was answering the claim against it by the Appellant herein who was the Plaintiff and its employee in the case before the Learned Magistrate. In my considered view the amendment ought to have been allowed. The Court finds and holds that the proposed amendment was not immaterial or useless or merely a technical one. It was to correct a clerical mistake. Had the Appellant taken the initiative at the first instance she would have been saved from the agony of the manifest failure exhibited in the myriad efforts to execute.
10. The Court allows the amendment of the name of the Respondent to read Kasbondo Aim Dairy Co-operative Society Limited which is to substitute the name Kabondo Aim Dairy Co-operative. The Appeal succeeds to this extent. However, the Appellant will bear the costs of this Appeal.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 3RD DAY OF APRIL 2025

NZIOKI WA MAKAU, MCIArb.

JUDGE

