



**Kenya Union of Commercial, Food & Allied Workers v Ruchu Gacharage Farmers Co-operative Society Ltd (Cause E021 of 2021) [2022] KEELRC 13542 (KLR) (15 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13542 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE E021 OF 2021  
ON MAKAU, J  
DECEMBER 15, 2022**

**BETWEEN  
KENYA UNION OF COMMERCIAL, FOOD & ALLIED WORKERS .. CLAIMANT  
AND  
RUCHU GACHARAGE FARMERS CO-OPERATIVE SOCIETY  
LTD ..... RESPONDENT**

**RULING**

1. The respondent has filed a Notice of Motion dated April 12, 2022 seeking for the following orders:
  1. That this court be pleased to allow the Respondent to amend its Response to the Claim to correct computational/arithmetic errors in the terms proposed in the draft Amended Response to the claim annexed hereto.
  2. That cost of this Application be provided for.
2. The application is premised on the grounds on the body of the motion and the Supporting Affidavit sworn by the respondent's Advocate Mr Philip Wambugu. In brief the amendment sought is meant to correct an inadvertent arithmetic and computation errors which were discovered during mediation proceedings. The applicant contends that the amendment will bring clarity in the pleadings and correctly by addressing the issues in dispute regarding the outstanding terminal dues payable to the grievants. Further the amendment will not prejudice the claimant but it will assist the court to determine effectively the issues surrounding the suit on merits.
3. The claimant filed grounds of opposition which in brief is to the effect that the application lacks merits and it is bad in law; that it is a delaying tactic; and that it is prejudicial to the rebuttal filed in the reply to defence.



4. The application was disposed of by written submissions. The Respondent urged the court to exercise discretion under section 100 of the [Civil Procedure Act](#) which allows for amendment of pleadings generally at any stage of the proceeding for the purposes of determining the real question or issue raised in the proceedings.
5. The respondent further relied on Order 8 Rule (3) of the [Civil Procedure rules](#) which permits amendment of pleadings at any stage for the purpose of determining the real question in controversy between the parties or correcting a defect or error in any proceedings. The order for amendment may be made by the court on its own motion or upon application by any of the parties upon terms as to costs.
6. It was further submitted that courts have adopted a general rule that amendment of pleading sought before the hearing should be freely allowed if injustice would not be occasioned, that cannot be compensated by costs. For emphasis reliance was placed on the Court of Appeal decision in [Okiya Omtatab & Another v Bidco Africa & 4 Others](#) (2018) eKLR and [Lafey Construction Limited v Prism Investments Limited](#) (2020) eKLR.
7. It was clarified that amendment is only disallowed if it is inconsistent with original pleadings and entirely alters the nature of the defence. To fortify the foregoing submissions, reliance was placed on [Joseph Ochieng & 2 Others v First National Bank of Chicago](#) (1990) eKLR and [Abdul Karim Khan v Mohamed Roshan](#) (1965) EA 289 (CA).
8. Finally the respondent submitted that the discretion to order for amendment is wide and urged the court to consider the draft amended defence and allow it because it is only seeking to correct arithmetical errors without introducing new cause of action. Further, the respondent believes that the amendment will neither prejudice the claimant nor occasion on it any injustice.
9. The claimant submitted that it pleaded the correct figures as the outstanding terminal dues payable to the grievants and the respondent admitted the same in its defence. It was further submitted that the parties agreed before the court that the only issue for determination was the mode of payment and referred the same for mediation. Finally the claimant submitted that the amendment is being sought rather late and it is a delaying tactic.

## Analysis

10. The issue for determination is whether the amendment sought should be allowed. 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 proceedings.”
11. Again Order 8 rule 3 of the [Civil Procedure](#) also provides that the court may at any stage of proceeding allow any party to amend his pleadings. Rule 5(1) then gives the justification for amendment of pleadings, thus:-
 

“For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”



12. It would appear from the foregoing provisions that the discretion of the court to order for amendment of pleadings is wide. The cited judicial precedents indicate that amendment of pleadings is to be freely allowed unless it is likely to occasion prejudice or injustice to the opposite party by substituting the cause of action or defence.
13. In the *Okiya Omtatab* case above, the Court of Appeal held;

“The policy of the law is that amendment to pleadings are to be freely allowed unless by allowing them, the opposite side would be prejudiced or suffer injustice which cannot properly be compensated for in costs.”
14. Having considered the draft amended defence annexed to the motion, and the circumstances of the case before the court, I am satisfied that the amendment sought should be allowed. It does not introduce a new defence or replace the original defence. It is only seeking to correct arithmetical errors on the terminal dues payable to the grievants according to the respondent taking into account part payments made.
15. The claimant has not demonstrated any prejudice or injustice that will be occasioned on its case by the proposed amendment. The amendment will assist the court to effectively determine the real issue before it, which is the correct outstanding terminal dues payable to the grievants herein. Consequently, I allow the application as prayed but the leave is for 14 days only. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 15<sup>TH</sup> DAY OF DECEMBER, 2022.**

**ONESMUS N MAKAU**

**JUDGE**

**ORDER**

**In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

**ONESMUS N. MAKAU**

**JUDGE**

