



**Mutinda (Suing as Mother and Next Friend of the Minor (TS)) v  
Consolata School (Petition E278 of 2024) [2025] KEHC 663 (KLR)  
(Constitutional and Human Rights) (31 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 663 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION E278 OF 2024**

**EC MWITA, J**

**JANUARY 31, 2025**

**BETWEEN**

**ZUBEIDA IKATA MUTINDA ..... PETITIONER  
SUING AS MOTHER AND NEXT FRIEND OF THE MINOR (TS)**

**AND**

**CONSOLATA SCHOOL ..... RESPONDENT**

**RULING**

1. This is a ruling on the application dated 23<sup>rd</sup> September 2024, seeking leave to amend the petition. The application is supported by the petitioner’s affidavit. The petitioner states that the petition did not properly describe the respondent by its legal status, a mistake occasioned by her counsel. The amendment is intended to properly describe the respondent.
2. The petitioner argues that it is the interest of justice that the error by her counsel be excused and leave to amend be granted so that the proper question and substance of the dispute can be determined on merit. The respondent will also not suffer any prejudice if leave to amend is granted.
3. The respondent has opposed the application through a replying affidavit. The respondent argues that the petition is a non-starter and cannot be amended because it is instituted against a person who has no capacity to be sued.
4. The respondent further contends that the application is meant to defeat its preliminary objection dated 26<sup>th</sup> August 2024; the Consolata School as sued is a school in Meru to which the respondent has no affiliation with and, therefore, the petition is fatally defective and should be dismissed with costs.



5. The application was heard orally on 31<sup>st</sup> October 2024. Mr. Haggai, counsel for the petitioner, relied on the supporting affidavit and argued that rule 18 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, (Mutunga Rules) gives this court discretion to grant leave to amend the petition. He urged the court to allow the application.
6. Miss. Kariuki, counsel for the respondent, argues in opposition to the application and challenges the capacity of the respondent to be sued. She relies on the replying affidavit and the decision in *Janto Construction Company Ltd v Enock Sikolia & 2 others* [2020] eKLR and urges the court to strikeout the application.
7. I have considered the application and the oral arguments by counsel for the parties. The application seeks leave of court to amend the petition. The main reason for seeking to amend, is to give proper description of the respondent. The respondent has opposed the application, arguing that the respondent sued is a different school based in Meru and has no affiliation with the respondent in this petition.
8. The petitioner has sought leave to amend her petition to give proper and accurate description of the respondent. Rule 18 of the Mutunga Rules confers on the court discretion to grant leave to amend. It provides that “A party who wishes to amend its pleadings at any stage of the proceeding may do so with the leave of the court.” That is, pleadings may be amended at any stage with leave of the court. Leave to amend pleadings is discretionary and like any other discretions, it must be exercised judiciously.
9. Rule 3(1) of the rules provides that the rules apply to all proceedings made under Article 22 of *the constitution*. The overriding objective of the rules being to facilitate access to justice for all persons as required under Article 48 of *the constitution* (sub rule 2). Sub rule (3), requires that the rules be interpreted in accordance with article 259(1) of *the constitution* and be applied with a view to advancing and realising rights and fundamental freedoms enshrined in the Bill of Rights and values and principles in *the constitution*. Sub rule (4) of the rules states that when exercising its jurisdiction under the rules, the court should facilitate the just, expeditious, proportionate and affordable resolution of all disputes.
10. For purposes of furthering the overriding objective, sub rule (5) behoves the court to handle all matters presented before it so as to achieve, among others, the just determination of the proceedings. Sub rule (6) obligates parties to proceedings, or their advocates, to assist the court in furthering the overriding objective of the rules.
11. As is clear from the rules, the overriding objective of the rules is to facilitate access to justice for all persons as required by Article 48 of *the constitution*. Article 48 provides that the State shall ensure access to justice for all persons. It is for that reason, that rule 18 gives the court unfettered discretion to grant leave to amend. The rule does not impose any conditions on the court when considering an application for leave to amend. It does not even make it mandatory for one to make a formal application. The essence being to facilitate access to justice. In that respect, the court should not impose on itself conditions when considering an application for leave to amend, but act in manner that facilitates access to justice.
12. The petitioner has asked the court to allow her to amend the petition to correct an error on the description of the respondent. The court notes the intended amendment is merely to give the full and correct name of the respondent. The respondent’s argument as can be seen from the replying affidavit, is that the petitioner sued a party that has no capacity to be sued. The respondent has not argued that granting leave will not facilitate access to justice, or that it will cause prejudice to it. The respondent has also not demonstrated the harm it will suffer if leave to amend is granted.



13. This court has been moved under article 22 of *the constitution* and has jurisdiction under article 23(1) as read with article 165(3) of *the constitution* to determine the issues presented before it. The amendment sought to be made will enable the court determine the real issue in controversy between the parties. The court must therefore apply its mind to the overriding objective of the rules and act in a manner that will facilitate access to justice.
14. Consequently, and considering the nature of the amendment to be made, the application dated 23<sup>rd</sup> September 2024 is allowed as follows:
  1. The petitioner is hereby granted leave to amend the petition.
  2. An amended petition be filed and served within 14 days from the date hereof.
  3. Once served, the respondent will have 14 days to file and serve a response to the amended petition, if need be.
  4. Parties will thereafter have 30 days to file and exchange written submissions to the petition, if not already done.
  5. Directions on 9<sup>th</sup> June 2025 to confirm compliance.

**DATED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JANUARY 2025**

**E C MWITA**

**JUDGE**

