



REPUBLIC OF KENYA



**Shah v Patel & 2 others (Civil Case 437 of 2015)  
[2025] KEHC 739 (KLR) (Civ) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 739 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL CASE 437 OF 2015**

**JN MULWA, J**

**JANUARY 30, 2025**

**BETWEEN**

**SAROJ J SHAH ..... PLAINTIFF**

**AND**

**NARAN MANI PATEL ..... 1<sup>ST</sup> DEFENDANT**

**KANTILAL NARAN MANJI ..... 2<sup>ND</sup> DEFENDANT**

**HEBROS TRADERS ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Saroj J. Shah (hereafter the Applicant) took out the Notice of Motion dated 26<sup>th</sup> September, 2024 (the Motion) expressed to have been brought under Orders 8 and 51 of the Civil Procedure Rules (CPR); and Sections 1A, 1B and 3A of the *Civil Procedure Act* (CPA) and seeking an order for leave to further amend the amended plaint dated 31<sup>st</sup> August, 2016 in the manner set out in the draft further amended plaint annexed to the Motion, and that upon a grant of the order for leave, the further amended plaint be deemed to be properly on record.
2. The Motion is premised on the grounds on its face and the facts stated in the affidavit of the Applicant who in summary, states that the amendment sought is for the inclusion of special damages in the sum of Kshs. 66,698,781.50 which damages have now been ascertained, pursuant to an assessor's loss adjustment report which was filed in court on 9<sup>th</sup> December, 2019.
3. The Applicant further states that in any event, the assessor who prepared the above mentioned report will be available to attend court for cross-examination on the contents thereof, should the circumstances require so; and that no prejudice stands to be suffered by any party to the suit.



4. To oppose the Motion, Naran Mani Patel, Kantilal Naran and Manji (hereafter the 1<sup>st</sup> and 2<sup>nd</sup> Respondents) filed Grounds of Opposition dated 14<sup>th</sup> October, 2024 containing the following grounds:
  1. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants contest the intended amendment of the amended Plaintiff dated 31<sup>st</sup> August 2016 only to the extent that a new cause of action has been introduced.
  2. The intended amendment to the amended plaintiff dated 31<sup>st</sup> August 2016 introduces a new cause of action regarding the alleged confiscation of a motor vehicle which allegedly occurred in two separate incidents in 2011.
  3. The new cause of action is time barred by the express provision of Section 4(1) of the *Limitation of Actions Act*, Cap. 22, Laws of Kenya.
  4. This Honourable Court lacks the jurisdiction to allow the amendment of the amended plaintiff in respect of introducing a new cause of action in view of the express provision of section 4 (1) of the *Limitation of Actions Act*, Cap.22.
  5. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants stand to suffer prejudice as the present application seeks to introduce a new cause of action that is time barred against them.
  6. The application on that ground is unmeritorious and the prayers sought regarding the introduction of the cause of action ought to be dismissed.
5. Thus, the parties were directed to file and exchange written submissions on the Motion. To support the Motion, counsel for the Applicant submits that contrary to the position being taken by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in their Grounds of Opposition, no new cause of action will arise out of the intended amendments. Counsel for the Applicant maintains that the cause of action remains to be that of unlawful and illegal eviction of the Applicant, resulting in loss and damage to the Applicant.
6. It is counsel's contention that in particular, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents confiscated the Applicant's motor vehicle which was last valued at the sum of Kshs. 5,000,000/- and wish to unjustly enrich themselves from the proceeds of the sale thereof. It is equally counsel's contention that the intended amendments are simply aimed at ascertaining the loss suffered by the Applicant, whose loss was assessed at the total sum of Kshs. 66,698,781.50 pursuant to the loss and adjusters assessors report dated 21<sup>st</sup> November, 2019 (the Report).
7. In urging the court to dismiss the instant Motion, the Respondents' counsel anchors his submissions on the decisions in *Institute For Social Accountability & another v Parliament of Kenya & 3 others* [2014] eKLR and *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] eKLR on the principles for consideration by a court, when determining an application seeking leave to amend a party's pleadings.
8. Counsel proceeds to echo his clients' sentiments raised in the Grounds of Opposition, that the intended amendments will give rise to a fresh cause of action which is time barred by dint of the *Limitation of Actions Act*, Cap. 22 Laws of Kenya; citing the case of *Gladys Nduku Nthuki v Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff)* [2022] eKLR where the court sought to define a cause of action in the following manner:

“A cause of action is every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court.”



9. Counsel further submits that initially, the Applicant pleaded the particulars of loss as being: “loss of use of furniture and household items confiscated by the defendants” and made no mention of a motor vehicle at any particular point in time, whether in her original pleadings or in her amended plaint, yet she now seeks to further amend the amended plaint to include the said motor vehicle. That the subject of the motor vehicle would constitute a new cause of action. Counsel adds that the purported claim in respect of the motor vehicle is time barred by dint of Section 8 of the [Limitation of Actions Act](#). Consequently, the court is urged to dismiss the instant Motion and to uphold the Grounds of Opposition.
10. Hebros Traders (hereafter the 3<sup>rd</sup> Respondent) did not participate in the proceedings in respect of the Motion.
11. The court has considered the rival affidavit material and the submissions on record, together with the authorities relied upon in respect of the instant Motion.
12. The background facts to the matter in brief, are that the dispute herein which arose out of a landlord-tenant agreement between the Applicant and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, was originally filed before the Environment and Land Court vide ELC Case No. 309 of 2011 before being transferred to the High Court-Civil Division, for disposal. On its part, the 3<sup>rd</sup> Respondent was sued in its capacity as an Auctioneer.
13. Upon transfer, the Applicant filed an amended plaint dated 31<sup>st</sup> August, 2016 in place of the original plaint dated 27<sup>th</sup> June, 2011 and pursuant to leave of the court granted on 30<sup>th</sup> August, 2016. The record shows that the suit is part heard, with the Applicant having so far called three (3) witnesses to testify. It is apparent from the record that the Applicant through her advocates intended to call a fourth witness, namely Dr. Wilson Kivindu, who is said to be a Registered Loss Assessor and Loss Adjuster and who intended to produce the Report. It is apparent from the record that however, an issue arose in the course of the proceedings as pertains to the Report and/or valuation, thereby prompting the filing of the instant Motion.
14. Turning to the Motion therefore, it is clear that the primary order sought therein is for leave to further amend the amended plaint. In essence, the Applicant wishes to amend the particulars of damages sought to include general and aggravated damages for confiscated goods and items; and special damages sought for carted away goods and motor vehicle valued at Kshs. 66,698,781.50. Previously, the special damages had not been ascertained in the Applicant’s pleadings.
15. The law on amendments of pleadings is well settled. Under Section 100 of the CPA, this court has general power to amend pleadings to correct any defect or error in a suit at any stage of the proceedings on terms as to costs or otherwise as it may deem just and all amendments should be made for the purpose of determining the real question or issues raised by or depending on the proceedings. The above-cited provision is echoed by Order 8, Rules 3 and 5 of the CPR.
16. Order 8, Rule 3 provides thus:
  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 subrule (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 subrule if it thinks just so to do.



3. An amendment to correct the name of a party may be allowed under subrule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.
  4. An amendment may be allowed under subrule (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.
17. Order 8, Rule 5 on its part expresses that:
1. 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.
  2. This rule shall not have effect in relation to a judgment or order.
18. From a reading of the foregoing provisions, it is clear that the courts have wide and unfettered discretion to allow the amendment of pleadings at any stage of the proceedings before judgment is entered, for purposes of determining the real question or issue raised by parties. It is also clear that an amendment of pleadings may be permitted even where the effect would be to add or substitute a new cause of action so long as the same arises out of similar facts or substantially the same facts. However, it is noteworthy that such discretionary power ought to be exercised in a judicious and just manner.
19. The foregoing position was echoed in *Bullen and Leake and Jacobs Precedents of Pleadings*, 12<sup>th</sup> Edition page 127 thus:
- “...the power to grant or refuse leave to amend a pleading is discretionary and is to be exercised so as to do what justice may require in the particular case, as to costs or otherwise. The power may be exercised at any stage of the proceedings and accordingly amendment may be allowed before or at the trial or after trial or even after judgment or an appeal. As a general rule, however, the amendment is sought to be made, it should be allowed if it is made in good faith and if it will not do the opposite party any harm, injury or prejudice him in some way that cannot be compensated by costs or otherwise.”
20. In addition, the Court of Appeal in the case of *Dakianga Distributors (K) Ltd v Kenya Seed Company Limited* [2015] eKLR borrowed from the above reference, in the following manner:
- “A useful discussion on the importance of pleadings is to be found in *Bullen and Leake and Jacob's Precedents of Pleadings*, 12th Edition, London, Sweet & Maxwell (The Common Law Library No. 5) where the learned authors declare:-
- “The system of pleadings operates to define and delimit with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them. It thus serves the two-fold purposes of informing each party what is the case of the opposite party which he will have to meet before and at the trial, and at the same time informing the court what are the issues between the parties which will govern the



interlocutory proceedings before the trial and which the court will have to determine at the trial.”

21. Upon consideration of the above persuasive and binding authorities on the subject of amendment of pleadings, the question is whether the Applicant herein is entitled to a grant of leave to further amend her pleadings in the manner set out above.
22. Upon the court’s perusal and consideration of the record and as earlier mentioned, it is apparent that the amendments sought are essentially intended to include general and aggravated damages in respect of the goods purportedly confiscated by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, as well as to include special damages to the tune of Kshs. 66,698,781.50 being the total loss assessed in the Report, resulting from the alleged confiscation of the Applicant’s household goods, the motor vehicle particularized as Ford Cortina Mark 1 Model 1971, and medical costs subsequently incurred by the Applicant resulting from medical conditions which were allegedly triggered by the dispute.
23. It is apparent from the record that the report which forms the basis for the amendments being sought, was at all material times within the knowledge and possession of the Applicant and/or her advocates. In fact, the record shows that the said report was filed as part of the Applicant’s Further List and Bundle of Documents dated 9<sup>th</sup> December, 2019. It therefore remains unclear why the Applicant did not seek leave to amend her pleadings accordingly, at the time of filing or soon thereafter.
24. The applicant amended its plaint in August 2016. It failed to include the claim now sought to be added, yet it had all the necessary knowledge and material facts of the same. No credible explanation has been given as to why the Applicant chose to wait close to another eight (8) years to move the court by the instant application to further amend the plaint, yet it is apparent that the intended amendments constituted matters presumably within the Applicant’s knowledge as per contents of the report.
25. Furthermore, and with regards to the subject motor vehicle, there is no clear indication as to when the same was allegedly confiscated by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Be that as it may, the mere fact that it features in the Report indicates that the facts of the alleged confiscation were well within the knowledge of the Applicant at all material times.
26. It is evident that there was an undue delay by the applicant to bring the application, and no explanation has been offered. In the case of *Institute For Social Accountability 7 another v Parliament of Kenya & others* (2014) eKLR, the court held that “...an amendment may be allowed provided that there has been no undue delay, no new cause of action or inconsistent cause of action is introduced , and no vested interest or accrued legal right is affected and that the amendment can be allowed without an injustice to the other side.”
27. Additionally, the plaintiff pleads particulars of damages as the confiscated goods and items to date at paragraph 10. viii. of the original and amended plaint. There is no mention of damages to a motor vehicle or at all. The plaintiff’s prayer for leave to add damages to a motor vehicle appears to be an afterthought, yet too late in the day. In the courts view, the plaintiff seeks to introduce a new cause of action to the existing cause which in the courts view is inconsistent with the original course of action, and the undue delay not explained at all. See also the case of *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* (2013) eKLR whereof the court held “...that the plaintiff would not be allowed to reframe his case or his claim if by amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts”.
28. It is the court’s view therefore, that the instant Motion has not been brought in good faith and it is merely an afterthought and a last attempt at mending the gaps in the Applicant’s pleadings. Further



the court notes that the Motion has been brought too late in the day, the suit having been instituted close to a decade ago.

29. The court is also of the view that given the nature of the amendments sought, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are likely to be prejudiced if the orders sought are granted at this stage. In view of the foregoing circumstances, the court is not inclined to exercise its discretion in favour of the Applicant.
30. The upshot is that the court finds the Notice Motion dated 26<sup>th</sup> September, 2024 to be lacking in merit, and proceeds to dismiss the same with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Respondents.

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**

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**JANET MULWA.**

**JUDGE**

