



Chase Bank(Kenya) Limited v Ngechu t/a Aberdare Steel & Hardware (Commercial Case 82 of 2016) [2025] KEHC 7519 (KLR) (Commercial and Tax) (29 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7519 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 82 OF 2016
JWW MONG'ARE, J
MAY 29, 2025**

BETWEEN

CHASE BANK(KENYA) LIMITED PLAINTIFF

AND

**SOLOMON NDIBUI NGECHU T/A ABERDARE STEEL &
HARDWARE DEFENDANT**

RULING

1. By way of a Notice of Motion dated 11th January 2024, the Plaintiff seeks the leave of the court to amend its plaint in terms of the draft amended plaint annexed to the deposition of Stephanie Kioko, the Plaintiff's Legal Officer, sworn on 11th January 2024. This application is opposed by the Defendant through his replying affidavit sworn on 4th March 2024. The Plaintiff has also supplemented its position by filing written submissions.
2. I am in agreement with the Plaintiff's submission that the Civil Procedure Rules grants the court discretionary power to allow amendment of pleadings as follows under Order 8 Rule 5(1):

“For the purpose of determining the real question in controversy between the parties, or correcting any defect or error in any proceedings, the court may either on 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.”



3. The Plaintiff has also rightly submitted that the Court of Appeal, in *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] KECA 345 (KLR) held as follows in respect of amendment of pleadings:

The law on amendment of pleading in terms of section 100 of the *Civil Procedure Act* and Order VIA rule 3 of the repealed Civil Procedure Rules under which the application was brought was summarized by this Court, quoting from Bullen and Leake & Jacob's *Precedents of Pleading - 12th Edition*, in the case of *Joseph Ochieng & 2 others vs. First National Bank of Chicago, Civil Appeal No. 149 of 1991* as follows: -

“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.”

4. The Plaintiff states and submits that the purpose of the amendment sought is to enable the Court to determine the real issues in controversy between the parties once and for all and that they do not seek to introduce new or inconsistent cause of actions or issues but substitution of parties and clarification of their correct legal positions. The Plaintiff submits that it only seeks to correct the parties as well as correctly state the issue between the parties to the suit and that these new amendments are not foreign or inconsistent with the subsisting cause of action which is centered on the parties and the issues and that no prejudice or injustice will be suffered by the Defendant. That in any event, the matter has not proceeded to hearing and the Defendant will have opportunity to amend his pleadings if he does deem it necessary. can issue such an order is a matter for trial and hearing of the main petition.
5. In opposition, the Defendant depones that the Plaintiff has not adduced an iota of evidence before the Court to prove its averments that Aberdare Steel & Hardware is a Limited Liability Company. However, he admits that Aberdare Steel & Hardware Limited is a body corporate, a persona juridica, with a separate independent identity in law, distinct from its shareholders, directors and agents and capable of suing and being sued on its own capacity. Further, that the resolution to amend the plaint is an afterthought after a perusal of the Defendant's defence and that the amendment is an attempt to steal a match over him. As such, the Defendant depones that the application to amend the pleadings ought to be dismissed forthwith and unconditionally as it stands gravely prejudice him.
6. I have gone through the application, the Defendant's response and the Plaintiff's submissions. Going through the annexed the draft plaint, I note that the same largely seeks to substitute what it feels are the correct parties to this suit including the Plaintiff which was acquired by SBM Bank (K) Ltd that took over this matter and I take judicial notice of this fact and; substitute the Defendant who also admittedly does not run Aberdare Steel & Hardware as a business name but as a separate corporate entity. I also note that the cause of action has not materially changed as the Plaintiff retains the same prayers it seeks in its original plaint. Thus, being that all the issues being added in the amendment do not depart from the original claim or change the character of the suit and considering that this matter is yet to be set



down for hearing, I find that no prejudice will be suffered by the Defendant if the Plaintiff is allowed to amend its plaint. Further, no substantial injustice will be suffered by the Defendant which cannot be assuaged by a way of costs. I note that the Defendant has also denied some averments raised in the annexed draft plaint but I will advise him to make such denials or rejoinders in its amended defence and at the hearing, if he so wishes.

7. In the upshot, I make the following orders:-

1. The Plaintiff is granted leave to amend its Plaint.
2. The Amended Plaint should be filed and served within 7 days from the date of this Ruling.
3. The Defendant is granted corresponding leave to amend, file and serve an Amended Defence within 14 days from the date of service with the Amended Plaint.
4. The costs of this application are granted to the Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF MAY 2025

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

Mr. Phillip Ndegwa for the Applicant.

N/A for the Respondent.

Amos - Court Assistant

