



**EBS Group Company Limited v Excellent Business Services (Civil Suit E915 of 2021)
[2025] KEHC 11409 (KLR) (Commercial & Admiralty) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11409 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
CIVIL SUIT E915 OF 2021**

PM MULWA, J

JULY 31, 2025

BETWEEN

EBS GROUP COMPANY LIMITED PLAINTIFF

AND

EXCELLENT BUSINESS SERVICES DEFENDANT

RULING

1. Before this Court for determination is the Notice of Motion dated 12th June 2024 brought by the Defendant pursuant to the provisions of Order 8 Rules 3 and 5 of the *Civil Procedure Rules*. The Defendant seeks leave of this Court to amend its Defence. The application is supported by the affidavit of Furqan Afzal Chattha, a Director of the Defendant Company, who depones that upon a careful review of the pleadings and material facts, he noticed errors and omissions in the original Defence that necessitate amendment in order to enable the Court to adjudicate fully on all matters in controversy.
2. The application is opposed by the Plaintiff through the Replying Affidavit of Chattha Shahzad Kumar sworn on 28th June 2024. The Plaintiff contends that the amendments sought are inconsistent with the existing pleadings and evidence on record, and are therefore contrary to the provisions of Order 8 Rule 7(2) of the *Civil Procedure Rules*. It is also the Plaintiff's position that the proposed amendments contradict previously admitted facts and are tailored to obscure the real issues in controversy, thereby amounting to an abuse of the court process and a delay tactic.
3. Both parties filed their respective submissions. The Defendant's submissions are dated 18th July 2024, while those of the Plaintiff are dated 23rd September 2024. I have carefully considered the application, the affidavits filed by both parties, the annexures thereto, the rival submissions, and the applicable law.



4. The legal framework governing the amendment of pleadings is set out in Section 100 of the [Civil Procedure Act](#), which provides:

“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 proceeding”.

5. The power to allow amendment of pleadings is further provided for under Order 8 Rule 3(1) of the [Civil Procedure Rules](#), which states:

“Subject to Order 1, Rules 9 and 10, Order 24, Rules 3, 4, 5 and 6, and the limitations arising from the law of limitation of actions, 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.”

5. Similarly, Order 8 Rule 5 (1) of the [Civil Procedure Rules](#) provides as follows:

“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 documents to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”

6. The principles guiding the exercise of discretion in applications for amendment were succinctly set out by the Court of Appeal in [Central Kenya Limited v Trust Bank Limited & 5 Others](#) [2000] 2 EA 365, where it was held:

“That a party is allowed to make such amendments as may be necessary for determining the real question controversy or to avoid a multiplicity of suits provided that there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.”

7. I have carefully considered the contents of the draft Amended Defence. It is apparent that the Defendant seeks to introduce clarifications and additional averments which, while not included in the original pleading, appear to be central to the dispute at hand. The Plaintiff objects on the ground that the proposed amendments contradict earlier admissions. However, the law permits a party to withdraw or qualify admissions made in earlier pleadings, provided the Court’s leave is sought. This position was affirmed in [Joseph Ochieng & 2 Others t/a Aquiline Agencies v First National Bank of Chicago](#), Civil Appeal No. 149 of 1991, where the Court of Appeal held:

“The mere fact that a proposed amendment is inconsistent with earlier pleadings does not justify the rejection of the amendment; the party may resile from an admission made in the original pleadings.”

8. In the instant case, the Defendant has explained the basis upon which it seeks to amend the Defence, namely, to address inadvertent errors and to enable the Court to determine all matters in controversy. The Plaintiff’s objections, while substantial, largely go to the merits of the amended Defence itself rather than to the principle of whether an amendment should be allowed. In my view, those objections



can adequately be addressed through evidence at trial and do not, at this stage, amount to sufficient prejudice to bar the proposed amendments.

9. On the allegation that the application is a delaying tactic, I am not persuaded. The record shows that the application was filed before the commencement of the hearing. No evidence has been furnished to demonstrate that the Plaintiff will suffer prejudice that cannot be compensated by an award of costs. The timing, therefore, does not disclose any undue delay or mala fides.
10. In exercising its discretion to allow amendment, the Court must strike a balance between the need to ensure a fair hearing and the duty to avoid prejudice or injustice. In this case, I find that the amendments sought are necessary for the proper and effectual adjudication of the real issues in controversy. They are not scandalous, vexatious, or prejudicial to the Plaintiff in a manner that cannot be remedied by costs.
11. Accordingly, I find merit in the Application and I allow the Application dated 12th June 2024 on the following terms:
 - a. The Defendant shall file and serve the Amended Statement of Defence within 7 days from the date hereof.
 - b. The Plaintiff shall be at liberty to amend its Reply to Defence (if any) within 7 days of service.
 - c. The costs of this application shall be in the cause.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Ms. Akong'a for Plaintiff

Mr. Omollo for Defendant/Applicant

Court Assistant: Carlos

