



**Friendrich v Pevans East Africa Limited t/a Sportpesa & another (Commercial Case 347 of 2017) [2025] KEHC 11443 (KLR) (Commercial and Tax) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11443 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE 347 OF 2017**

**PM MULWA, J  
JULY 31, 2025**

**BETWEEN**

**JOHN FRIENDRICH ..... PLAINTIFF**

**AND**

**PEVANS EAST AFRICA LIMITED T/A SPORTPESA ..... 1<sup>ST</sup> DEFENDANT**

**BRADLEY LIMITED T/A PAMBAZUKA NATIONAL LOTTERY .... 2<sup>ND</sup>  
DEFENDANT**

**RULING**

1. The 1<sup>st</sup> Defendant filed the Notice of Motion dated 1<sup>st</sup> September 2023, under Order 18 Rule 10 and Order 50 Rule 1 of the *Civil Procedure Rules*, Sections 1A, 1B and 3A of the *Civil Procedure Act*, Section 146(4) of the *Evidence Act* and Article 50(1) of the *Constitution*, seeking that the plaintiff's case herein be reopened and the plaintiff be recalled for further cross-examination. The Applicant further seeks that the Plaintiff be compelled to produce his original identity card for verification and identification by the Principal Registrar of Persons and costs of this application be provided for.
2. The application is based on the grounds on its face, the supporting and supplementary affidavits sworn by the 1<sup>st</sup> Defendant's director and corporation secretary, Robert Macharia on 1<sup>st</sup> September 2023 and 24<sup>th</sup> June 2024. The 1<sup>st</sup> Defendant/Applicant also filed written submissions dated 24<sup>th</sup> June 2024 and supplementary submissions dated 15<sup>th</sup> November 2024.
3. According to the 1<sup>st</sup> Defendant, there had been discovery of material facts which necessitate the reopening of the Plaintiff's case and the recalling of the Plaintiff for cross-examination on the question of his true identity. It is contended that the Plaintiff used a fictitious identity to file and prosecute the instant case. And further that this material evidence could not be produced when the Plaintiff testified as it was not at the time within the knowledge of the 1<sup>st</sup> Defendant.



4. The 1<sup>st</sup> Defendant submitted that it is critical the Plaintiff's case be reopened to further cross-examine him on the veracity of his testimony with a view to interrogate the issue of his identity, and relied on the decision in *Nicholas Angwenyi Siro t/a Riverside Continental Resort v Finley Kirui and Another* (2019) eKLR.
5. The Plaintiff opposed the application through a replying affidavit sworn on 18<sup>th</sup> January 2024, a supplementary affidavit sworn on 8<sup>th</sup> October 2024 and written submissions of the same date. It was deposed that the application is fictitious, an abuse of the court process and only meant to mislead the court and delay the determination of the case which has been in court since 2017. The Plaintiff contends that during the hearing of his case he was cross-examined as to his identity and the same was not a fact in issue. And that what the Applicant had done was to mis-spell his name and associate him with another person not known to him with a view to divert the Court's attention and avoid settlement of the sum sought.
6. The Defendant argued that he had attached documents including a copy of his identity card and that there was no contrary evidence availed to show he was not the Plaintiff and therefore the application ought to be dismissed. The Plaintiff further submitted that the 1<sup>st</sup> Defendant had not demonstrated why the documents they sought to produce were not adduced at pretrial or prior to the hearing or even during the hearing of the Plaintiff's case on 23<sup>rd</sup> February 2021.

#### **Analysis and determination**

7. I have considered the application, the parties' respective affidavits, evidence, submissions and authorities cited. The issue for determination is whether the 1<sup>st</sup> Defendant has met the threshold for the grant of the orders sought, that is to re-open the Plaintiff's case and the re-call of the Plaintiff for further cross examination.
8. Section 146 (4) of the *Evidence Act* generally grants the Court powers to recall a witness. It provides as follows:

“The court may in all cases permit a witness to be recalled either for further examination in chief or for further cross examination and if it does so, the parties have the right of further cross examination and re-examination respectively.”
9. Similarly, Order 18 Rule 10 of the *Civil Procedure Rules* grants the Court powers to recall a witness. It provides thus:

“The court may at any stage of the suit recall any witness who has been examined, and may, subject to the law of evidence for the time being in force, put such questions to him as the court thinks fit.”
10. It follows therefore that the decision whether or not to re-open an ongoing case is purely left to the realm of judicial discretion which should be exercised judiciously and in the interest of justice.
11. The record shows that when the case came up for hearing on 23<sup>rd</sup> February 2021 the Plaintiff testified in chief and was cross examined by learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively. At the time he stated that he was the plaintiff, John Friendrich, a musician and lived in Nairobi. That he held an identification card but did not have it in court then. Upon the close of the Plaintiff's case, the 1<sup>st</sup> Defendant's witness testified on 18<sup>th</sup> July 2022 and matter was adjourned for further defence hearing. It is then that the 1<sup>st</sup> Defendant brought the instant application.



12. Jurisprudence on the issue of reopening of cases and recalling of witnesses is in most cases divided. However, the rule of the thumb is that courts should exercise their discretion based on particular circumstances of each case to arrive at a just and fair conclusion and in the interest of justice.
13. This Court notes that the 1<sup>st</sup> Defendant alleges the Plaintiff used a fictitious identity to file and prosecute this case, that is the name of one John Friedrich. The Applicant wants the Plaintiff to be recalled to avail his identity card and be further cross examined. On the other hand, the Plaintiff argues he is John Friedrich and in his replying affidavit attached a copy of his national identity card.
14. No doubt the Plaintiff testified on 23<sup>rd</sup> February 2021 and was cross examined extensively by the defence counsel. Recalling a witness who testified in 2021 to be cross examined on an issue which was fairly addressed would not only be prejudicial but unfair and unjust. Reopening of a case is defeated where the action would prejudice a party to the case. No new material or evidence has been availed by the 1<sup>st</sup> Defendant to warrant the recalling of the plaintiff for further cross examination. This case has been in court since 2017 and it ought to be dispensed with.
15. On the issue of examination of the Plaintiff's identification documents as submitted by the 1<sup>st</sup> Defendant, this is not a criminal court and pre-trial discovery and gathering of evidence must be managed by the parties. The 1<sup>st</sup> Defendant has doubts as to the genuine and identity of the Plaintiff and is entitled to do so. However, in expressing those doubts the 1<sup>st</sup> Defendant cannot be allowed to turn the court into an investigative agency. To do so, the court will, in my view, be descending into the parties' arena. Parties must be left to present evidence in support of their respective cases.
16. Consequently, the application dated 1<sup>st</sup> September 2023 is devoid of merit and is disallowed. The 1<sup>st</sup> Defendant will pay costs of the application to the Plaintiff.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

N/A for Plaintiff

Mr. Gakaria for 1<sup>st</sup> Defendant/Applicant

Ms. Swaka h/b for Mr. Njenga for 2<sup>nd</sup> Defendant

Court Assistant: Carlos

