



**Ogundo v Bett (Civil Case 66 of 2013) [2025] KEHC 11531 (KLR) (Civ) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11531 (KLR)

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

**CIVIL**

**CIVIL CASE 66 OF 2013**

**JN MULWA, J**

**JULY 31, 2025**

**BETWEEN**

**JAMES OGUNDO ..... PLAINTIFF**

**AND**

**HON FRANKLIN BETT ..... DEFENDANT**

**RULING**

1. For determination is the motion filed by Hon. Franklin Bett (hereafter the Defendant/Applicant) dated 16/04/2024 as against James Ogundo (hereafter the Plaintiff/Respondent) seeking inter alia:-
  - a. That this Honorable Court be pleased to grant leave to the defendant to further amend his amended defence dated 30/05/2013 and filed in Court on 30/05/2023 as per the annexed draft further amended defence.
  - b. That the cost of the motion be in the cause.
2. The motion is brought pursuant to Section 1A, 1B & 3A of the *Civil Procedure Act* (CPA), Orders 8 Rule 3 & 5 of the *Civil Procedure Rules* (CPR) and on grounds on the face of the motion amplified by the supporting affidavit deposited by the defendant.
3. The gist of his application is that it has since come to his knowledge that the Plaintiff sued the Standard Group Ltd and obtained judgment against it and he was duly compensated. He further deposes that there was only one act of defamation therefore once the Plaintiff successfully sued Standard Group Ltd, his right to sue was spent as such it is in the interest of justice that the motion is allowed.
4. James Ogundo opposes the motion by way of a replying affidavit dated 25/07/2024. He assails the merit of the defendant's motion by deposing that the same was not filed timeously; that the amendment sought is immaterial towards determination of the real issues in controversy in a suit whereas Standard Group Ltd is a separate legal entity that the Plaintiff has a right to sue jointly and



separately; that the motion is an afterthought; and that the proposed amendment if allowed would cause injustice upon him.

5. In summation, the Plaintiff concludes that the Defendant's application is an abuse of Court process and ought to be dismissed.
6. Parties filed written submissions, which the Court has considered alongside affidavit material placed before it.

Issues for determination: -

- a. Whether leave ought to be granted to the Defendant to amend its further amended defence?
  - b. Who ought to bear the costs of the motion?
7. In presenting the instant motion, the Defendant has relied on among others provisions of the CPA, Section 3A which specifically reserves "the inherent power of the court "to make such orders as may be necessary for ends of justice or to prevent abuse of the process of the court." This Court's inherent powers was judiciously addressed by the Court of Appeal in Rose Njoki King'au & Another v Shaba Trustees Limited & Another [2018] eKLR and requires no restatement. Alongside the above provision, the Plaintiff has equally relied on Order 8 Rule 3 & 5 of the CPR. Order 8 Rule 3 provides that-;
    - (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 to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under subrule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued.
    - (5) 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.



8. Whereas Rule 5 of the same Order provides -;
- (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.
9. The purport of the latter provision is echoed in Section 100 of the CPA wherein it can be deduced that the kernel of amendment of pleadings serves the purpose of aiding the Court determine the real questions or issues in controversy as between disputing parties. The Court in the case of Institute for Social Accountability & Another v. Parliament of Kenya & 3 Others [2014] eKLR while addressing the objective of amendment of pleadings observed-;
- “the object of amendment of pleadings is to enable the parties to alter their pleadings, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings”.
10. The same Court went on to render itself to the effect-;
- “a party that wishes to amend its pleadings at any stage of the proceedings may do so with leave ..... that the court will normally allow parties to make such amendments as may be necessary..... to avoid a multiplicity of suits, provided there has been no undue delay, or new or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that affected and that the amendment can be allowed without an injustice to the other side”
11. In addressing the instant application this Court is equally mindful of wording of Order 8 Rule 3(5) of the CPR, earlier set out verbatim. That said, having duly considered the cited authorities and legal provisions underpinning the subject of amendments as stated above, it can be deduced therefrom that this Court is empowered to allow amendments to assist it determine the real issues in controversy in a suit, and if omitted by whatever reasons, if leave is sought upon application or suo moto, if the need and necessity to amend arises, proceed to allow the amendments.
12. The Court in Institute for Social Accountability case (supra) observed that an amendment ought to be allowed even if the cause of action changes so long as the facts relied upon for the amendments sought are the true facts the parties finally intend to rely on. Thus, the Court is clothed with wide powers to allow amendment of pleadings for a fair and just hearing to be conducted in terms of Article 50 of the Constitution as well as under Sections 1A, 1B & 3A of the CPA, toward facilitating the just, expeditious, proportionate and affordable resolution of civil disputes and to avoid multiplicity of suits.
13. Upon the above, the Court has taken the liberty of perusing the draft further amended defence (Annexure FB1) and the intended amendment that the Defendant wishes to introduce. By all accounts, the said amendment would not occasion injustice or irreparable loss to the Plaintiff or appear to mutate the claim or be an abuse of the Court process. It seems to the court that its intention is to bring to the fore all necessary facts to aid this Court judiciously determine the real issues in controversy.



14. Whereas, the Defendant does not divulge to this Court when the judgment in respect of the Plaintiff claims as against Standard Group Ltd was rendered, the delay or otherwise that may be occasioned by such omission while equally noting that the instant cause of action was filed close to twelve (12) years ago, any prejudice by way of delay visited on the Plaintiff can reasonably be compensated by an award of costs. The Plaintiff will equally not be prejudiced by the said amendment given that the respective parties will have an opportunity to test the rival pleadings and evidence at trial.
15. Consequently, while the Plaintiff's reservations have been noted, the same do not outweigh the purport of the intended amendment and the exhortation in Article 50 of the Constitution as well as under Sections 1A, 1B & 3A of the CPA.
16. The upshot is that the Defendant's motion dated 16/04/2024 succeeds and is allowed in the following terms-;
  - a. The Further Amended Defence shall be filed and served in terms of the draft- further amended defence within 7 days of this ruling.
  - b. The Plaintiff will be at liberty to further amend its reply to the amended defence within 14 days of service.
  - c. Meanwhile given the age of the suit and in furtherance of the overriding and exercise of objectives in Sections 1A & 1B of the CPA, the Court directs that the parties set down the suit for mention on a priority basis before the Deputy Registrar (DR) to confirm compliance and take pre-trial directions on 25/09/2025.
  - d. Costs of this motion shall abide by the outcome of the suit.

Orders accordingly.

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

.....

**JANET MULWA.**

**JUDGE**

