



REPUBLIC OF KENYA



KENYA LAW
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**Shah & another v Middle East Bank Limited (Civil Suit
E124 of 2021) [2025] KEHC 12344 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12344 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL SUIT E124 OF 2021
F WANGARI, J
JULY 31, 2025**

BETWEEN

RAMNIKLAL JIVRAJ MEMCHAND SHAH 1ST PLAINTIFF

RAJESH RAMNIKLAL SHAH 2ND PLAINTIFF

AND

MIDDLE EAST BANK LIMITED DEFENDANT

RULING

1. The Defendant/Applicant filed a Notice of Motion application dated 01/07/2024 under Order 50 Rule 1, Order 8 Rule 6 of the Civil Procedure Rules seeking for orders that the Amended Plaint be struck out and costs of this application be paid by the Plaintiffs.
2. The application was made on grounds that leave to amend the Plaint was given by this court on 11/04/2024, but the Amended Plaint was filed on 19/06/2024, more than 14 days after the date of the order, and that the said order was thus of no effect when the Amended Plaint was filed and hence the Amended Plaint has been filed without leave of this court.
3. The Plaintiffs/Respondents filed Grounds of Opposition dated 13/02/2025 stating that the application is bad in law and an abuse of the court process, and that the application is overtaken by events.
4. The Plaintiffs/Respondent also filed an Affidavit in Reply sworn on 13/02/2023 by Joel O. Obura that the Plaintiff was granted extensions by the court to file the Amended Plaint, with the last extension on 16/10/2024 in the presence of counsel for the Defendant. The Plaintiff was to file the Amended Plaint before 16/12/2024, which was done and served upon the Defendant's advocates. That the Amended Plaint filed on 19/06/2024 has never been served upon the Defendant's advocates, and that instead the Amended Plaint dated 11/12/2024 was served.



5. The Defendant/Applicant filed a Further Affidavit 28/03/2025 by Felix Nganga Karanja, the advocate having the conduct of this matter on behalf of the Defendant. He stated that the only Amended Plaintiff served upon their firm was the one dated 18/06/2024 and that at no stage was the firm served with any Amended Plaintiff dated 11/12/2024.
6. That they are also not aware of any extension of time being given for filing of the Amended Plaintiff on 16/10/2024. That it was on receipt of the Amended Plaintiff on 19/06/2024 that the firm made an application to strike it.
7. The Application was canvassed by way of written submissions. Both parties complied by filing their rival submissions, which I have perused through.

Analysis

8. This court has perused through the application, supporting affidavit, filed submissions and the responses thereto. The issues for determination are: -
 - a. Whether the Amended Plaintiff should be struck out
 - b. Who should bear costs
9. I have perused through the court proceedings. On 25/07/2023, the Plaintiff was directed to file an application seeking to amend the Plaintiff within 21 days. On 17/10/2023, the counsel for the Plaintiff submitted that he was unwell and did not comply with the timelines. The application had been served upon the Defendant.
10. The application was allowed by consent on 11/04/2024. On 19/06/2024, the counsel for the Applicant stated that he had filed the Amended Plaintiff dated 18/06/2024 but had not served it upon the Respondent. The court directed that the same be served upon the Defendant. On 16/10/2024, the court was informed that the Amended Plaintiff was yet to be served and a further mention date given for 16/12/2024.
11. On 16/12/2024, the defence counsel informed the court that the application subject to this ruling was filed and it was directed that the application be served.
12. It is a fact that the Plaintiff did not file the Amended Plaintiff within the timelines given. The Plaintiff's counsel states that the Amended Plaintiff dated 18/06/2024 was not served upon the Defendant but the Amended Plaintiff dated 11/12/2024.
13. From the proceedings for 16/10/2024, Mr. Karanja Advocate appeared for the Plaintiff while Mr. Jengo Advocate held brief for Mr. Obura Advocate for the Plaintiff. Mr Karanja stated as here under;

“The Amended Plaintiff has not been filed and served. Mr. Obura has a medical issue. We can give him time.”
14. From the above, the counsel for the Plaintiff admits that they had not received any Amended Plaintiff from the Plaintiff. He acknowledged that the counsel for the Plaintiff has been unwell and he stated that the Plaintiff can be given more time. Further mention was given for 16/12/2024, and on the said date, Mr. Obura informed the court that he had served the Amended Plaintiff together with the list of documents.
15. The averment by the counsel for the Defendant that only the Amended Plaintiff dated 19/06/2024 was served upon them contradicts the recorded proceedings for 16/10/2024.



16. The issue is whether the admission of the Amended Plaintiff would be prejudicial to the Defendant. The Defendant had no objection to have the amended Plaintiff filed. The issue was that the Plaintiff filed the Amended Plaintiff outside the given timelines, and the Amended Plaintiff on record was filed out of time and without leave of court.
17. As stated herein above, the delay was due to the illness of the Plaintiff's advocate, a fact admitted by the counsel for the Defendant. It is also on record that on 17/10/2023. Mr. Obura stated that he had not complied with the court's directions as he had been unwell.
18. Though there was delay on the part of the Plaintiff's counsel, the errors of an advocate should not be visited upon the party. In the case of Lucy Bosire v Kehancha Div Land Dispute Tribunal & 2 others [2013] eKLR, the Court held that mistakes of Advocates, should not be visited on their clients when the situation can be remedied by costs.
19. I note that there are two Amended Plaintiffs on record. For purposes of order, the Amended Plaintiff dated 18/06/2024 is expunged from the court records. The Amended Plaintiff dated 11/12/2024 is deemed to be properly on record and the same be served upon the Defendant within 7 days from this ruling.
20. On costs, the same follows the event. Considering that there was delay on the part of the Plaintiff, I exercise the discretion of the court and direct that each party to bear its own costs.
21. The upshot of the foregoing is that the court renders itself as hereunder: -
 - a. The Notice of Motion Application dated 01/07/2024 has no merits and is hereby dismissed.
 - b. The Amended Plaintiff dated 11/12/2024 be served upon the Defendant within the next 7 days.
 - c. Parties to comply with Order 11 of the Civil Procedure Rules within the next 45 days.
 - d. Each party to bear its own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 31ST DAY OF JULY, 2025.

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HON. F. WANGARI

JUDGE

In the presence of;

Mr. Obura Advocate for the Plaintiff/ Applicant

Mr. Karanja Advocate for the Defendant/ Respondent

Ms. Norah, Court Assistant

