



**Telepost Sacco Society Ltd v Nyaga (Tribunal Case 90 of 2021)
[2024] KECPT 231 (KLR) (7 March 2024) (Ruling)**

Neutral citation: [2024] KECPT 231 (KLR)

**REPUBLIC OF KENYA
IN THE COOPERATIVE TRIBUNAL
TRIBUNAL CASE 90 OF 2021
BM KIMEMIA, CHAIR, F LOTUIYA, P. GICHUKI & PO AOL, MEMBERS
MARCH 7, 2024**

BETWEEN

TELEPOST SACCO SOCIETY LTD CLAIMANT

AND

MARTIN GITAU NYAGA RESPONDENT

RULING

1. This ruling dispenses with the Notice of Motion Application dated 16th May 2023 which is supported by an Affidavit sworn by an Officer of the Claimant, one Maryanne Ndekei. The same is brought under Sections 1A, 1B & 3A of the *Civil Procedure Act*, Order 8 Rule 3(1) & (2) & Order 51 Rule 1 of the *Civil Procedure Rules* 2010. The application seeks the following orders;
 1. That the Applicant/Claimant be granted leave to amend the statement of claim herein.
 2. That the annexed draft Amended Statement of Claim be deemed as duly filed upon payment of the requisite filing fees.
 3. The cost of this application be in the cause.
2. The Application is premised on the grounds on its face which are *inter alia* that the proposed amendments are intended to bring before the Tribunal a real, true and actual controversy between the parties. That the proposed amendments arise out of the same facts, that they do not alter the character of the suit and that it will not cause any prejudice to the Respondent.
3. The background of the application is that the Claimant was a member of the Claimant and the Claimant advanced him several loans which he defaulted and hence the present suit. Both parties filed submissions.



Issues for Determination.

4. After perusing through the pleadings and the written submissions of both parties, it is the Tribunal's opinions that there is one issue to be determined:
 - i. Whether the Applicant/Claimant should be allowed to amend the claim?

Analysis

5. Order 8 of the [Civil Procedure Rules](#) is concerned with amendment of pleadings. Order 8 rule 3 allows the court at any stage of the proceedings on such terms as to costs or otherwise may be just and in such manner as it may direct, allow any party to amend their pleadings. In [John Gitau Mwangi v Stephen Kabebe & Others](#) the court set out the general principles for dealing with amendments. The overriding considerations were whether the amendments were necessary for the determination of the suit and the delay was likely to prejudice the opposing party beyond compensation.
6. This Tribunal has perused the proposed amended statement of claim and noted that the Claimants have not introduced any new matter but just expounded on how the current claim arose, and are necessary for the determination of the suit, and finds no prejudice to the Respondent if the same is allowed.
7. We find that the Applicant/Claimant has complied with the laid down principles for amendment of pleadings.
8. From the foregoing, the Tribunal order as follows:
 1. Leave for amending the Statement of Claim is granted. The Amended Claim is deemed duly filed and should be served to the Respondent subject to payment of fees
 2. Costs in the cause.
 3. Respondent granted leave to amend Response if need be.
 4. Mention for Pre-trial directions on 6.5.2024.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF MARCH, 2024.

Hon. Beatrice Kimemia - Chairperson Signed 7.3.2024

Hon. Beatrice Sawe - Member Signed 7.3.2024

Hon. Fridah Lotuiya - Member signed 7.3.2024

Hon. Philip Gichuki - Member Signed 7.3.2024

Hon. Michael Chesikaw - Member Signed 7.3.2024

Hon. Paul Aol - Member Signed 7.3.2024

Tribunal Clerk Jemimah

Miss Gathira holding brief for Dr. Kamotho for Respondent.

Miss Wairimu holding brief for Kabugu for Claimant.

Hon. Beatrice Kimemia - Chairperson Signed 7.3.2024

