



Kuguru Food Complex Limited v Kenya Pipeline Company Limited (Environment & Land Case 589 of 2010) [2023] KEELC 17786 (KLR) (30 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17786 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 589 OF 2010**

**MD MWANGI, J
MAY 30, 2023**

BETWEEN

KUGURU FOOD COMPLEX LIMITED PLAINTIFF

AND

KENYA PIPELINE COMPANY LIMITED DEFENDANT

RULING

1. The application for determination before this Court is the Plaintiffs' Notice of Motion dated the 26th January, 2023 seeking for Orders:
 - a. That leave be granted to the Plaintiff/Applicant herein to amend his Complaint dated 1st December, 2010 in terms of the draft Amended Complaint filed herein.
 - b. That upon such leave being granted, the draft Amended Complaint filed herewith be deemed properly filed and served subject to payment of court fees.
 - c. That costs of this Application be provided for.
2. The application is supported by the Affidavit of Peter Kuguru deponed on the 26th January, 2023 and premised on the grounds, inter alia that:
 - a. The proposed amendments are necessary to properly and effectually plead all the issues in dispute for conclusive determination by the court.
 - b. The proposed amendments are not prejudicial to the Defendant who shall, in any event, be at liberty to amend their pleadings, if necessary.
 - c. It is in the interest of justice that the prayers sought herein be granted.
3. The Defendant opposed the aforesaid application by way of grounds of opposition dated the 10th February, 2023. The Defendant contends that that the application is incompetent misconceived and



is an abuse of the court process aimed at wasting judicial time and resources at the expense of the Defendant. Further that the proposed amendments introduce a new and inconsistent cause of action which would substantively alter the character of the original cause of action.

4. The Defendant contends that the proposed amendments introduce a claim in excess of Kshs. 500,000,000/= which is too drastic and warrants the filing of a fresh suit. In any event, it argues that the proposed amendment is time barred by virtue of the provisions of Section 4(2) of the Limitation of Actions Act, having been made after the stipulated three-years period.
5. The Defendant asserts that there has been undue delay in filing of the application as the Applicant has taken more than a decade to do so, since he filed his suit in court. No reasonable, plausible or satisfactory explanation has been given for the inordinate delay. The application should therefore be dismissed with costs.

Court's Directions

6. The Court directed that the parties canvass the Application by way of written submissions. The parties complied and filed their respective submissions. The court has had the opportunity to read the submissions.

Issues for Determination

7. In this Court's opinion, the only issue for determination is whether the Applicant's Notice of Motion for amendment is merited.

Analysis and Determination

8. Order 8 Rule 3 of the Civil Procedure Rules provides for amendment of pleadings with leave of court as follows: -

“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.’

9. Further, Order 8, Rule 5 provides for the general power to amend.

“5. 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.’

10. In the case of the Institute for Social Accountability & another v Parliament of Kenya & 3 others [2014] eKLR the court held: -

“The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, 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....The court will normally allow parties to make such amendments as may be necessary for determining the real questions in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, no new or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that the amendment can be allowed without an injustice to the other side.”

11. The Court of Appeal outlined the principles in amendment of pleadings in the case of [Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited](#) [2013] eKLR as follows: -

“The law on amendment of pleading in terms of section 100 of the [Civil Procedure Act](#) and Order VIA rule 3 of the repealed Civil Procedure Rules under which the application was brought was summarized by this Court, quoting from Bullen and Leake & Jacob’s Precedents of Pleading - 12th Edition, in the case of [Joseph Ochieng & 2 others v First National Bank of Chicago](#), Civil Appeal No. 149 of 1991 as follows: -

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts.”

12. The Applicant’s justification is that after they had the Valuation Report and the Rent Assessment Report, it became necessary to effect the amendments. The amendments introduce the figures in the two reports as an alternative prayer for compensation at the current market value of the suit property. The Plaintiff/Applicant submits that the new amendments are not foreign or inconsistent with the subsisting cause of action which is centered around the laying of a pipeline on the suit property without any lawful authority or licence from the Plaintiff.
13. Although the Respondent is concerned about the timing of the application for amendment, it should not be lost to it that the right to a fair hearing as enshrined under Article 50 of the [Constitution, 2010](#) is a non-derogable right that should be accorded to every litigant. Further, the Respondent has the right to file an amended Defence if need be, hence, no prejudice will be suffered. This court has the responsibility to ensure that litigants are given ample opportunity to ventilate and make their presentations in respect of all the issues arising in their case.
14. For the purpose of determining the real questions in controversy between the parties herein, this court will allow the Plaintiff’s application to amend the Plaint and accord the Defendant an automatic right of reply.
15. Accordingly, this court makes the following orders: -
- a. The Plaintiff is granted leave to amend his plaint.
 - b) The amended plaint to be filed and served within 7 days from the date of this ruling.



- c) The Defendant is granted corresponding leave to amend, file and serve an amended defence within 14 days from the date of service of the amended plaint.
- d) The costs of the application shall abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF MAY 2023.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Mbanji for the Plaintiff/Applicant.

No appearance by the Defendant/Respondent.

Court Assistant – Yvette.

M.D. MWANGI

JUDGE

