



REPUBLIC OF KENYA



**Shah v Paramount Bank Ltd & 7 others (Civil Case E217 of 2020)
[2023] KEELC 17893 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17893 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL CASE E217 OF 2020
EK WABWOTO, J
MAY 25, 2023**

BETWEEN

ZAVERCHAD RAMJI SHAH PLAINTIFF

AND

PARAMOUNT BANK LTD 1ST DEFENDANT

KURWA LIMITED 2ND DEFENDANT

KARIM KANANI 3RD DEFENDANT

ALDERMEN LIMITED 4TH DEFENDANT

CHIEF LAND REGISTRAR, NAIROBI 5TH DEFENDANT

FREDRICK NGATIA, SC 6TH DEFENDANT

MERCY WAMBUI KAMAU 7TH DEFENDANT

STEPHEN KIPKENDA KIPLAGAT 8TH DEFENDANT

RULING

1. The 1st defendant has filed an application dated January 13, 2023 seeking for orders that the plaintiff's amended plaint dated December 15, 2022 be struck out on the grounds that the new parties listed as 6th, 7th and 8th defendants were joined to these proceedings without leave of the court.
2. The application was opposed by the plaintiff who filed a lengthy replying affidavit sworn by Hassan Mahamed Abdirahman on February 7, 2023. It was averred *inter alia* that the court had *vide* its ruling delivered on October 18, 2022 had granted leave to amend the pleadings and that the 6th, 7th and 8th defendants were joined as necessary parties to enable the court effectively and completely adjudicate upon the issues of fraud raised in the suit.



3. The application was heard by way of oral submissions made by counsel for the parties. During the plenary hearing of the application, senior counsel Mr Ngatia submitted that the 1st defendant herein had filed an application seeking leave to amend its defence which application was allowed by the ruling of the court delivered on October 18, 2022 and based on the said ruling, the 1st defendant filed its amended defence. Counsel also submitted that at paragraph 6 of the said ruling, the plaintiff would have a chance to respond to the amendments made. It was also submitted that the plaintiff ought not to have introduced new parties while responding to the amended defence filed by the 1st defendant. Counsel relied on the following authorities in support of the 1st defendant's application; *Joseph Njau Kingori v Robert Maina Chege & 3 others* [2002] Eklr, *Pravin Bowry v John Ward & another* [2015] eKLR, *Muiga & 2 others (suing as the administrators of the estate of the late Susan Wateru Muriithi) v Kagia & 3 others* (civil case 284 of 2018) [2022] KEHC 9840 (KLR) (Civ) (22 July 2022) Ruling and *Maestro Connections Health Systems Limited & 2 others v Riley Services & 10 others* [2019] eKLR.
4. The 2nd, 4th and 5th defendants supported the application by the 1st defendant and equally urged the court to strike out the amended plaint.
5. The advocate for the plaintiff, Mr Shikanda, on the other hand submitted that the plaintiff had been granted leave to amend his pleadings and pursuant to the same filed an amended plaint and that the said amendment is permitted by law since the addition of the new parties will aid the court in effectively resolving the issue of fraud pleaded herein. Counsel also reiterated the averments deposed in the relying affidavit sworn by Hassan Mahamed Abdirahman in opposition to the application. He urged the court to dismiss the application
6. I have considered the application, the rival affidavits filed and oral submissions made by counsel for the parties. The main issue for determination is whether the application filed by the 1st defendant is merited to warrant the grant of the orders sought herein.
7. The plaintiff filed an amended plaint dated December 15, 2022 which according to the plaintiff was filed pursuant to the court's directions issued on October 18, 2022. The said amended plaint also introduced 3 new parties as 6th to 8th defendants and which action triggered the filing of the instant application by the 1st defendant.
8. The first point of reference would be the ruling delivered by the court on October 18, 2022. A perusal of the said ruling shows that at paragraph 7, the court issued the following orders;

“In the circumstances, I find that the application dated July 12, 2022 is merited and the same is allowed such that; the amended defence is to be filed and served upon all parties within 7 days. The respondents thereof are at liberty to amend their pleadings accordingly within 14 days from the date of service. The applicant shall pay the costs of the application.” This clearly shows that the orders granted by the court did not allow the Plaintiff to include new parties to the suit.
9. It is trite law that amendments allowed in a case should not have the effect of causing injustice to the other side nor should it amount to an abuse of the process of the court. In *Daniel Ngetich & another v KRep Bank Limited* 2013 KLR it was held that:

“Normally the court should be liberal in granting leave to amend pleadings. But it must never grant leave if the court is of the opinion that the amendment would cause injustice or irreparable loss to the other side or if it is a devise to abuse the process of the court.”



10. Moreso, amendments should not be allowed where the defendant would be deprived of his right to rely on *Limitation of Actions Act* – see the Court of Appeal decision in *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* (2013)eKLR. The joinder of new parties in the instant case was an abuse of the process of the court. Having found as such, it will serve no useful purpose in considering the other issues raised in the plaintiff's amended plaint.
11. In view of the foregoing, I find that the new parties were improperly joined in the suit. The 1st defendant's application dated January 13, 2023 is therefore merited. The amended plaint dated December 15, 2022 is accordingly struck out with costs.

Delivered, Dated and Signed at NAIROBI this 25th day of May 2023.

E.K. WABWOTO

JUDGE

In the presence of:

Mr. Shikanda h/b for Mr. Osundwa for the Plaintiff.

Mr. Ngatia S.C for the 1st Defendant.

Mr. Orege h/b for Mr. Ng'ang'a Mbugua for the 2nd Defendant.

Mr. Wachira for the 4th Defendant.

Mr. Kamau for 5th Defendant.

N/A for the other parties.

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