



REPUBLIC OF KENYA



KENYA LAW
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**Sketty v Bwana & 10 others (Environment & Land Case
213 of 2019) [2023] KEELC 18305 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18305 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 213 OF 2019**

NA MATHEKA, J

JUNE 21, 2023

BETWEEN

MUNIR MOHAMED SKETTY PLAINTIFF

AND

MUDATHIR SOMOE BWANA 1ST DEFENDANT

OMAR FARAJ ALIAS SACHMO 2ND DEFENDANT

FARUK FEISAL 3RD DEFENDANT

MUSA FRANCIS 4TH DEFENDANT

YUSUF IMAM 5TH DEFENDANT

DAUD MAHMOUD 6TH DEFENDANT

HAMZA MOHAMED 7TH DEFENDANT

ABASS ALI 8TH DEFENDANT

ALI DODO 9TH DEFENDANT

NASSIR KETE 10TH DEFENDANT

ADNAN SWADIK 11TH DEFENDANT

RULING

1. The application is dated August 22, 2022 and is brought pursuant to Order 8 Rule 3 of the [Civil Procedure Rules, 2010](#) seeking the following orders;

1. That the Plaintiff be granted leave to amend the Plaintiff on record as set out in the Draft Amended Plaintiff annexed to this Application.



2. That the Draft Amended Plaintiff be deemed as duly filed and served upon payment of the requisite Court filing fees, or, as shall be directed by this Honourable Court.
 3. That the costs of this Application be awarded to the Plaintiff.
2. It is premised by the Affidavit of Munir Mohamed Sketty and the grounds that the Plaintiff commenced this suit by way of the plaint dated November 19, 2018 which was filed in court on November 19, 2019. That pleadings in this matter have since closed but directions toward the hearing and determination of the main suit are yet to be taken. That during the course of the proceedings in this suit, the Defendants contemptuously interfered with and altered the subject matter of the suit thereby prompting the Plaintiff to file an application for contempt against the Defendants. That the contemptuous actions of the Defendants interfered with the factual matrix of the suit, and which in return prompted the Plaintiff to file this instant application. That the amendments proposed by the Plaintiff by way of the draft amended plaint annexed hereto shall not in any way prejudice the Defendants but will enable the court to effectively and conclusively determine the real questions and issues in controversy in this suit and raised in these proceedings.
 3. This court has considered the application and the submissions therein. The Applicant states that during the course of the proceedings in this suit, the Defendants interfered with and altered the subject matter of the suit thereby prompting the Plaintiff to file an application for contempt against the Defendants. That the contemptuous actions of the Defendants interfered with the factual matrix of the suit, and which in return prompted the Plaintiff to file this instant application on perusal of the draft amended plaint I find that the Applicant has removed the prayer of damages and included a mandatory order of injunction. In the case of *Central Kenya Ltd vs Trust Bank & 4 Others, CA No 222 of 1998*, the court stated that, the guiding principle in amendment of pleadings and joinder of parties is that:

' All amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.'
 4. On the issue of amendment of pleadings in the case of *AAT Holdings Limited vs Diamond Shields International Ltd (2014) eKLR*, the court cited the principles as set out by the Court of Appeal in *Central Kenya Ltd Case No 222 OF 1998* as shown below;
 - (i) That are necessary for determining the real question in controversy.
 - (ii) To avoid multiplicity of suits provided there has been no undue delay.
 - (iii) Only where no new or inconsistent cause of action is introduced i.e if the new cause of action does not arise out of the same facts or substantially the same facts as a cause of action.
 - (iv) That no vested interest or accrued legal rights is affected; and
 - (v) So long as it does not occasion prejudice or injustice to the other side which cannot be properly compensated for in costs.
 5. It is quite clear from decided cases that the discretion of a trial court to allow amendments of a Plaintiff is wide and unfettered except it should be exercised judicially upon the foregoing defined principles. In the case of *Isaac Awuondo v Surgipharm Ltd & Another [2011] eKLR* the Court of Appeal had the following to say:



6. In *Moi University v Vishva Builders Limited - Civil Appeal No 296 of 2004* (unreported) this Court said:-

' The law is now settled that if the defence raises even one bona fide triable issue, then the Defendant must be given leave to defend. In this appeal we traced the history from the commencement of relationship between the parties herein. The dispute arises out of a building contract. In the initial Plaintiff the sum claimed was well over 300 million but this was scaled down by various amendments until the final figure claimed was Kshs 185,305,011.30/- We have looked at the pleadings and the history of the matter and it would appear to us that the appellant had serious issues raised in its defence. As we know even one triable issue would be sufficient – see *HD Hasmani v Banque Du Congo Belge* [1938] 5 EACA 89. We must however hasten to add that a triable issue does not mean one that will succeed. Indeed, in *Patel vs EA Cargo Handling Services Ltd.* [1974] EA 75 at P 76 Duffus P said:-

In this respect defence on the merits does not mean, in my view a defence that must succeed, it means as SHERIDAN, J put it 'a triable issue' that is an issue which raises a prima facie defence and which should go to trial for adjudication.'

7. I have perused the proposed amended plaintiff and I see that no prejudice will be suffered by the parties should the amendment be allowed. I take note that this matter was filed in 2019, be that as it may, it is in the interest of justice that all matters ought to be brought before the court in order for the court to make a just and fair decision. The application dated 22nd August is merited and I grant it. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED IN MOMBASA THIS 21ST DAY OF JUNE 2023.

N.A. MATHEKA

JUDGE

