



Tajmall Limited v Kenya Urban Roads Authority & 5 others (Civil Case 466 of 2018) [2023] KEELC 20189 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20189 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL CASE 466 OF 2018
AA OMOLLO, J
SEPTEMBER 28, 2023**

BETWEEN

TAJMALL LIMITED PLAINTIFF

AND

KENYA URBAN ROADS AUTHORITY 1ST DEFENDANT

NATIONAL LAND COMMISSION 2ND DEFENDANT

MINISTRY OF LANDS & PHYSICAL PLANNING 3RD DEFENDANT

UNSAFE STRUCTURES 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

NAIROBI CITY COUNTY 6TH DEFENDANT

RULING

1. The plaintiff moved this court vide an application dated May 31, 2023 brought under the provisions of Order 1 and 8 of the Civil procedure Rules. The Plaintiff/Applicant sought the orders:
 - a. That leave be granted for the Chief Land Registrar to be joined as a defendant in this suit;
 - b. That the Plaintiff be granted leave to amend the plaint as per the proposed amended plaint;
 - c. Upon joinder of the proposed defendant, the draft amended plaint be deemed as filed subject to payment of relevant fees;
 - d. That the court be pleased to extend the leave granted to the plaintiff to file three additional witness statements, and the witness statement of Robert Mabeya, Prof Washington H.A Olima and Bibiana Rabuku together with the accompanying supplementary bundle of documents be deemed as duly filed and served



- e. Costs of the application be provided for
 - f. Any other relief the court deems fit to grant
2. The 1st to 5th defendants did not oppose the application. the 6th defendant opposed it by filing a replying affidavit sworn on June 14, 2023 deposing that the application is devoid of merit. The 6th respondent stated that in the course of the evidence of the plaintiff's case, they objected to the production of certain documents which made the plaintiff's erstwhile advocate seek time to respond to the objection. That the present application is seeking to defeat the said objection. They contend that the plea to amend pleadings ought to be undertaken in good faith as the objection to amend is not to introduce a new cause of action.
 3. The 6th defendant deposed that an amendment to a plaint should not be allowed in the middle of evidential proceedings since such action has the potential of having to deal with a claim that keeps mutating. That in this instance, the amendment is seeking to introduce a party who did not participate at the hearing of the evidence of PW1.
 4. The parties submitted orally to the application with the counsel for the applicant explaining the reason for the delay, to wit that the plaintiff changed counsel after reviewing the figures claimed. Counsel added that the plaintiff's witness is still on the dock and all the defendants will have opportunity to cross-examine him. That the new party being introduced is represented by the Attorney general who participated in the previous hearing. The Applicant further submits that the amendment does not stop the makers of the documents from being called to produce them.
 5. Learned Counsel for the 6th respondent submitted that the case of *St Patrick's Hill School Limited vs Bank Of Africa Limited* (2018) eKLR cited by the applicant lays out the principles to be considered in granting leave to amend pleadings. It is their argument that the proposed amendment besides introducing a new party, it is aimed at introducing new witnesses whose effect is to re-frame the claim.
 6. Order 1 rule 10(2) of the *Civil Procedure Rules* provides that the court may at any stage of the proceedings either upon application of either party order that the name of a party who ought to have been joined whether as plaintiff or defendant or whose presence before the court is necessary to effectually and completely adjudicate all questions be added. Order 8 rule 1 allow for amendment of pleadings at any stage of the proceedings with leave of the court.
 7. In the case of *St Patrick's Hill School supra*, Nyakundi J cited the decision of *Ochieng and others v First National Bank of Chicago* Civil Appeal Number 147 of 1991 where the court of Appeal clearly set out the principles guiding amendments of pleadings thus;
 - a) the power of the court to allow amendments is intended to determine the true substantive merits of the case;
 - b) the amendments should be timeously applied for;
 - c) power to amend can be exercised by the court at any stage of the proceedings;
 - d) 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;
 - e) 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 limitations Act subject however to powers of the court to still allow and amendment notwithstanding the expiry of current period of limitation.



8. This case is at the stage where the pleadings had closed and hearing commenced with the first witness still on the stand. The issue of delay here is how long the Plaintiff took before it formally moved the court and not that the hearing is advanced so that re-starting the case will be prejudicial to the defendants. Further, the 6th Respondent insisted that if the application for amendment is allowed, the objection they had raised would be defeated which is not the purpose of amendments. The witness statements and supplementary documents being added are from expert witnesses and their reports. I agree with the 6th defendant that they are likely to suffer prejudice in terms of their being forced to source for experts witness but which prejudice can be compensated by an award of costs. It serves the interest of justice to allow parties opportunities to fully litigate their claim and to do so requires that leave to amend be granted.
9. I am also not persuaded by the argument that the intended amendment will reframe the claim because the substance of the claim still remains a claim for damages arising from the demolition of the Plaintiff's structures on the suit land has not changed. The change of figures claimed under special damages has not shifted from the claim as originally presented.
10. In conclusion, I find merit in the application and allow it on the following terms;
 - a. The plaintiff granted 7 days to file and serve the amended plaint on all the Defendants
 - b. Leave to file the witnesses statements and supplementary bundle is granted and the statements and supplementary bundle of documents already filed are deemed as properly filed upon payment of the court fees.
 - c. The defendants granted 30 days to file amended defences if deemed necessary, together with any additional witness statements and documents
 - d. Costs of the application to the 6th defendant in any event

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF SEPTEMBER, 2023

A. OMOLLO

JUDGE

