



**Chemjor v Kipchilat (Environment & Land Case 60 of 2019)  
[2023] KEELC 20000 (KLR) (26 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20000 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 60 OF 2019  
JM ONYANGO, J  
SEPTEMBER 26, 2023**

**BETWEEN**

**JULIUS SIGILAI KIPKORIR CHEMJOR ..... APPLICANT**

**AND**

**SYLUS KIPCHILAT ..... DEFENDANT**

**RULING**

1. By a Notice of Motion dated August 31, 2022 the Applicant filed an application seeking leave to amend the Plaintiff as well as leave to substitute the plaintiff's Witness Statements and List and Bundle of Documents. The application is premised on the grounds that the Plaintiff needs to bring out all the issues in controversy.
2. The Defendant has opposed the application through the Grounds of Opposition dated June 8, 2023 in which he states that through the proposed amendments, the Plaintiff seeks to introduce a new cause of action and bring a claim of fraud. He also contends that the amendment if allowed would deprive the Defendant of the defence of limitation as the Plaintiff does not disclose when the alleged acts of fraud were discovered. He also complains that the Plaintiff has not annexed the witness statement that he wishes to substitute nor the Bundle of Documents he wishes to introduce.
3. The application was argued orally although the plaintiff also filed his written submissions.
4. In his submissions learned counsel for the plaintiff submitted that the plaintiff intends to bring on board all the necessary parties and bring out all the issues in controversy. He relied on the case of *Eunice Chepkorir v Bomet Water Company Limited* (2017) eKLR.
5. On the other hand learned counsel for the Defendant submitted that the draft amended Plaintiff brings in 4 new parties yet the application has no prayer for leave to join new parties to the suit. He further contended that in the Defence the Defendant had raised the issue of limitation as the suit was filed 21 years after the cause of action arose and the nature of amendments proposed are intended to defeat



this defence. He added that the proposed amendments seek to introduce fraud which is a new cause of action without disclosing when the alleged fraud arose. He pointed out that the proposed substituted Witness Statement had not been annexed to the application.

6. Having considered the application, the Grounds of Opposition and rival submissions the only issue for determination is whether the application should be allowed.

Order 8 Rule 3 (1) of the *Civil Procedure Rules* provides that:

"Subject to order 1 rules 9 and 10. Order 24 rule 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."

Order 8 Rule 3 (5) provides that

"An amendment may be allowed under sub-rule 2 notwithstanding that its effect will be to add or substitute a new cause of action, if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has been claimed in the suit by the party applying for leave to make the amendment"

Order 1 rule 10 (2) provides that:

"The court may at any stage of the proceedings, either upon or without the application of either party and on such terms as may appear to the court to be just, order that the name of any party improperly joined either as plaintiff or defendant be struck out and that the name of any person who ought to have been enjoined whether as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit be added."

7. In the case of *Ochieng v First National Bank of Chicago* Civil Appeal No 147 of 1991 cited in the case of *St Patrick 's Hill Scholl v Bank of Africa Kenya Limited* [2018] eKLR the Court of Appeal set out the principles under which courts may grant leave to amend pleadings as follows:

- "a. The power of the court to allow amendments is intended to determine the true substantive merits of the case.
- b. The amendment should be timeously applied for.
- c. The power to amend can be exercised by the court at any stage of the proceedings.
- d. As a general rule, however late the amendment is sought to be made, it should be allowed if made in good faith provided costs 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 the Limitations Act subject however to the powers of the court to still allow an amendment notwithstanding the current period of limitation."



8. Whether or not the plaintiff is entitled to leave to amend his plaint in accordance with the rules is a discretion to be exercised by the court judicially and within the principles of natural justice. In the case of Reg V Gaming Board ex Benalme 1970 2 QB 17 Lord Denning observed as follows:

“It is not possible to lay down rigid rules as to when the principle of natural justice are to apply nor as to their scope and extent. Everything depends on the subject matter”

9. In Josiah Magena v Wakenya Pamoja Sacco Society Ltd, Nrb ELRC Cause no 510 of 2014 Mbaru J held as follows:

The court has discretionary power to amend pleadings at any stage before judgment for purposes of determining the real questions or issues which have been raised by the parties. That discretionary power is exercised so as to do justice to the case. However, the said discretion must be exercised judicially and with prudence and not whimsically. This was well articulated in Institute for Social Accountability & Another v Parliament of Kenya & 3 others [2014] eKLR, where the court observed that:

“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.”

10. What can be gleaned from the above decisions is that the court has a wide discretion to amend pleadings at any stage of the proceedings so to bring out the real issues in controversy between the parties and on such terms as to costs as may be just. The principles of law with regard to amendment of pleadings, are underpinned by the sacred and sacrosanct principles of fairness, equity, equality, reasonableness, lawfulness, good conscience and morality.

11. In the present case the application for leave to amend the Plaint has been made before the matter is confirmed for hearing. Even though the defendant claims that the plaintiff intends to bring in new parties without a prayer for leave to join new parties, nothing stops the court from adding new parties to a suit even on its own motion. In my view any prejudice that may be suffered by the defendants can be compensated by costs.

12. Having carefully considered the application, affidavits and submissions of both counsel, I find merit in the application and I grant it and make the following orders:

- a. The plaintiff is granted leave to amend his plaint in terms of the annexed draft Amended Plaint;
- b. The Plaintiff shall file the Amended Plaint together with the substituted/ additional witnesses statements and List and bundle of Documents within 7 days.
- c. The Defendants shall file and serve their Amended Defences if need be, within 14 days after service.
- d. The Applicant shall bear the costs of this application.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2023.**



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**J.M ONYANGO**

**JUDGE**

