



REPUBLIC OF KENYA



KENYA LAW
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**Kilonzo v Kongoni River Farm Limited & 4 others (Environment & Land
Case 26 of 2021) [2023] KEELC 21457 (KLR) (24 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21457 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 26 OF 2021
AK BOR, J
OCTOBER 24, 2023**

BETWEEN

DOMITILA MUMBUA KILONZO PLAINTIFF

AND

KONGONI RIVER FARM LIMITED 1ST DEFENDANT

AGNES WANDAI KIMATA 2ND DEFENDANT

THE LAND REGISTRAR NANYUKI 3RD DEFENDANT

THE CHAIRMAN NATIONAL LAND COMMISSION 4TH DEFENDANT

THE HON ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. This case was supposed to be heard on 28/2/2023 but the Plaintiff's advocate applied for an adjournment and the hearing was therefore adjourned to 10/3/2023. The hearing could not proceed on 10/3/2023 because the 3rd to 5th Defendants had not been served, and it was put off to 27/6/2023.
2. On 27/6/2023, the 1st Defendant's advocate informed the court that a Further Amended Plaintiff had been served on them and they needed time to take instructions from their client. The court granted the Defendants leave to amend their defences, if need be, within 14 days and fixed the matter for mention on 18/7/2023.
3. When the matter came up on 18/7/2023, the Plaintiff's advocate informed the court that when the court allowed parties to file their trial bundles on 10/3/2023, she understood those directions to mean that the Plaintiff could file a Further Amended Plaintiff.
4. When the Defendants expressed concern about the filing of the amended plaintiff without leave, the Plaintiff's advocate submitted that order 8 rules 1 and 5 of the *Civil Procedure Rule* allowed



amendments before close of pleadings and gave the court discretion to allow amendment of pleadings. She added that she was moving the court under that rule as well as article 159 of the Constitution. She clarified that the additional prayer would not prejudice any party because the case was yet to proceed to hearing. Further, that the other parties would have an opportunity to present their cases for the court to determine the dispute.

5. The 1st Defendant's advocate urged that once pleadings had closed, a party could not amend their claim without leave of the court. He added that even though they may not be prejudiced there was an irregularity which needed to be addressed. He stated that they needed time to address the amendment before taking a decision on whether to amend the 1st Defendant's defence.
6. The 2nd Defendant's advocate confirmed that he was in court on 10/5/2023 and disagreed with the Plaintiff's advocate's interpretation of the court's directions. He clarified that leave was not granted for amendment of pleadings but it was for parties to file proper trial bundles. He pointed out that pleadings closed 14 days after service of the defence or reply to defence. He urged the court to expunge the further amended plaint from the court record and added that article 159 of the Constitution could not assist the Plaintiff because the matter at hand is a substantive issue and not a technicality.
7. Counsel for the 3rd and 5th defendants stated that the further amended plaint was not properly on record. She added that this was an old matter filed in 2014 and that allowing more amendments would delay the determination of the dispute. She urged the court to expunge the pleading from the record.
8. In response, the Plaintiff's advocate reiterated that none of the parties had shown the prejudice their clients would suffer if the amendments were allowed. She added that the court had jurisdiction to handle such matters. She also stated that she could file an application for amendment of the pleadings.
9. The issue for determination is whether the Plaintiff's Further Amended Plaint filed on 14/6/2023 is properly on record.
10. After pleadings have closed, order 8 rule 3(1) of the Civil Procedure Rules gives the court the discretion to allow a party to amend his pleadings at any stage on terms which the court may deem just. In this matter, pleadings had closed and the court had even set down the matter for hearing.
11. The directions the court gave on 10/3/2023 for parties to file and exchange their trial bundles were not blanket orders for parties to amend their pleadings or introduce new facts to the suit. They were merely intended to assist the parties and the court by streamlining the process so that the hearing can be conducted in an efficient manner.
12. The further amended plaint dated 24/5/2023 filed in court on 14/6/2023 is improperly before the court having been filed without leave of the court.
13. The Plaintiff is directed to move the court in the appropriate manner.

DELIVERED VIRTUALLY AT NANYUKI THIS 24TH DAY OF OCTOBER 2023.

K. BOR

JUDGE

In the presence of: -

Mr. Zephaniah Makori for the 1st Defendant

Mr. Mwangi Kariuki for the 2nd Defendant

Ms. Stella Gakii- Court Assistant



No appearance for the Plaintiff and the 3rd to 5th Defendants

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