



**Lomul v Samati & another (Environment and Land Appeal
1 of 2023) [2023] KEELC 22614 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 22614 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KABARNET
ENVIRONMENT AND LAND APPEAL 1 OF 2023
L WAITHAKA, J
OCTOBER 19, 2023**

BETWEEN

PAUL KIPTUI LOMUL APPELLANT

AND

BONIFACE KIPKEMBOI SAMATI 1ST RESPONDENT

GRACE CHEPKURUI CHESANG 2ND RESPONDENT

RULING

1. The application for consideration is dated 7th July 2023 brought under Article 159 (2) of the Constitution of Kenya 2010, Section 95, 1A, 1B and 3A of the Civil Procedure Act seeking the following orders;
 1. Spent.
 2. That this Honourable court be pleased to grant the appellant leave to amend the memorandum of appeal lodged on 11th November, 2022.
 3. That the prayers/orders sought in the appeal is marred by typographical errors which were inadvertently looked at before filing.
 4. That the intended amendment is necessary to enable the court determine all issues raised in the appeal and pronounce itself with finality and on merit.
 5. That the intended amendment will not occasion prejudice to the respondents.
 6. That the costs of this application be provided for.
2. The application is premised on the grounds stated on its face and the sworn affidavit of Edwin Kiprop Kipkulei counsel sworn on 7th July, 2023. He avers that he filed the memorandum of appeal and



thereafter realized it lacked clarity and flow making it necessary to file the instant motion to enable the court determine all issues and pronounce itself with finality and merit.

3. The application is not opposed.
4. The general power to amend pleadings is found in Section 100 of the [Civil Procedure Act](#) (CPA) which provides:-

“The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”

5. It is trite that the power reserved for the Court to amend any document is a discretionary power. Like all judicial discretion however, it must be exercised judiciously and upon reason, rather than arbitrarily, on humour, or fancy.
6. The court of Appeal in the case of [George Gikubu Mbutia v Consolidated Bank of Kenya Ltd & another](#) (2016) eKLR held:

“As regards the law, the High court readily accepted that the court has unfettered discretion to allow amendment of pleadings, which discretion must be exercised judiciously. It accepted too as a general position that parties to a suit have the right to amend their pleadings at any stage of the proceedings before judgment and that court should liberally allow such amendments. However, he also noted situations when the court will refuse to exercise its discretion to allow amendments. Such cases include where a new or inconsistent cause of action is introduced; where vested interests or accrued legal rights will be adversely affected; where prejudice or injustice which cannot be properly compensated in costs is occasioned to the other.”

7. In the case of [Merry Beach Ltd v Barclays Bank Kenya Ltd & another](#) (2018) eKLR the court held:

“Various authorities will show that amendment of pleadings should be allowed if the amendment will assist the court to determine the real question in controversy. Such an amendment should not introduce new or inconsistent cause of action. The amendment should not occasion prejudice or injustice to the opposing party. It is also a principle of law that it cannot be said that prejudice can be occasioned where costs can provide adequate compensation.”

8. In applying the above principles to the circumstances of this case, I am of the considered view that the amendments proposed in the amended memorandum of appeal reveal no basis to deny the application herein. The amendments are aimed at correcting typographical errors to bring flow and clarity to the memorandum of appeal and there will be no prejudice occasioned to the respondent. I therefore allow the notice of motion dated 7th July 2023 with costs to abide in the appeal.
9. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ITEN THIS 19TH DAY OF OCTOBER 2023.

L. N. WAITHAKA
JUDGE



In the presence of:

- No appearance for the appellant.
- No appearance for the respondent.

