



**NCBA Bank Kenya PLC (Formerly Commercial Bank of Africa Limited) v
Wardpa Holdings Limited & 7 others (Environment and Land Case Civil
Suit 941 of 2016) [2023] KEELC 21561 (KLR) (14 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21561 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 941 OF 2016
AA OMOLLO, J
NOVEMBER 14, 2023**

BETWEEN

**NCBA BANK KENYA PLC (FORMERLY COMMERCIAL BANK OF AFRICA
LIMITED) PLAINTIFF**

AND

**WARDPA HOLDINGS LIMITED 1ST DEFENDANT
CO-OPERATIVE BANK OF KENYA LIMITED 2ND DEFENDANT
LEAKEYS AUCTIONEERS 3RD DEFENDANT
CHIEF LAND REGISTRAR 4TH DEFENDANT
PATRICK KANGETHE NJUGUNA 5TH DEFENDANT
GLADYS NJERI KANGETHE 6TH DEFENDANT
GEORGE JAMES KIRERU KANG'ETHE 7TH DEFENDANT
EDWARD NJUGUNA KANG'ETHE 8TH DEFENDANT**

RULING

1. The Plaintiff filed notice of motion dated 23rd May 2023 seeking for the following orders;
 1. That this Honourable Court be pleased to grant leave to the Plaintiff to further amend its Amended Plaintiff dated 14th February 2020 as underlined and highlighted in blue in the draft Further Amended Plaintiff herein annexed.
 2. That the Plaintiff's Further Amended Plaintiff be deemed duly filed and
 3. That the costs of this Application be in the cause.



2. The motion was based on the grounds outlined in the supporting affidavit sworn on 23rd May 2023 by Stephen Atenya that the amendment seeks to help this Court in determining the real question in controversy between the parties and to reflect the correct position. He deposed that the amendment does not prejudice the Defendants in any way and the application has been made without undue delay.
3. The 1st and 5th Respondents filed Grounds of opposition dated 21st June 2023 stating that the Application is misplaced, an abuse of the court process, made in bad faith, frivolous, vexatious and a waste of quality judicial time. They contended that the Applicant has proved to be a vexatious litigant and should be barred from filing any further amended pleadings in court. That the Application as premised is likely to prejudice the expeditious disposal of this matter and does not set out a legally valid claim as it has departed from the original pleadings and introduced a totally new claim.
4. The 1st and 5th Respondents also contended that considerable amount of time has since lapsed since the matter was filed in Court in 2016 and that the reasons adduced for seeking to amend the Plaint are not satisfactory and further no evidence has been tendered to prove the same.

Submissions

5. The Plaintiff filed submissions dated 14th August 2023 in support of its application. Relying on Order 8 Rule 3(1) and Rule 5(1) of the Civil Procedure Rules, they submitted that the general rule is that amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side and there is no injustice if the other party can be compensated by costs.
6. They submitted that amendments to pleadings can be freely allowed at any time before delivery of a judgement and delay per se is not a ground enough to deny a party leave to amend his pleadings. Further, they submitted that a party to civil suit is entitled to seek leave to amend his pleadings more than once, if it became necessary and in support cited the case of Beatrice Gikunda v CFC Life Assurance Limited [2020] eKLR and Diamond Trust Bank v Tchui Data Limited & 3 Others [2006] eKLR.
7. With regard to determination on whether the Plaintiff's amendment should not be allowed because it would prejudice the Defendant's defence, the Plaintiff relied on the case of Komassai Plantations Limited v Bank of Baroda (Kenya)Ltd [2006 eKLR and also]National Cereals & Produce Board vs Dubai Bank of Kenya Limited, HCC No.32 of 2005 cited with authority in Prathap Industries v Unitech Industrial Agencies Limited [2015]eKLR where it was held that the Defendant also has an opportunity to amend his defence because that would be his vested right once an order is made following the amendment of the Plaint.
8. The Plaintiff also submitted that the amendment does not introduce a new cause of action and that most of the amendments sought are mostly deletions and that there is no indication that the 1st and 5th Defendants will suffer any prejudice for which an award of costs may not be adequate.
9. The 1st and 5th Defendants filed submissions dated 25th August 2021 stating that the Applicant previously had the chance to amend the Plaint and that should have been sufficient opportunity for the Plaintiff to include all the necessary omissions or facts it intended to. That the Plaintiff has realised the plaint has no real cause of action and wants to fill the gaps and employ delay tactics at the expense of the Defendants who have been massively prejudiced not only by the institution of this suit but also by the amount of time it has taken to prosecute it. In support they cited the case of Kassam v Bank of Baroda (Kenya)Ltd [2002] eKLR.
10. The 1st and 5th Defendants also cited the case of Monica Wamibu Macharia v AG & Another CA No.282 of 1998; Tulip Properties Ltd v Mohammed Koriow & 6 Others [2013] eKLR; Central Kenya



Ltd v Trust Bank Ltd Appeal No.222 of 1998; and *Timothy Ndalo Otiende v Joshua A. Osewe* Kisumu HCAA No.73 of 1996 to submit that the Plaintiff has failed to satisfy all the conditions/principles necessary to be met before the granting of leave to amend their pleadings and as such the reliefs sought herein are untenable.

11. Amendment of pleadings with leave of the Court is provided for under order 8 rule 3 of the *Civil Procedure Rules* subject to rules 9 & 10, order 24 rules 3, 4, and 6. Order 8 rule 3(5) provides thus;

“An amendment may be allowed under subrule (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 already been claimed in the suit by the party applying for leave to make the amendment.”

12. The above provision answers the Respondent’s ground that the proposed amendment has departed from the original claim and introduced a new one. In terms of no reasons being proffered why the proposed amendment were not included with the previous amendment, I agree with the Respondent that nothing is gleaned on the face of the application and the affidavit in support thereof. There is no contention the matter is old but the hearing had not commenced for various reasons contained in the record.

13. Thus, the Rules allow for amendment at any stage of the proceedings as in this case. The concerns of the Respondents are genuine in terms of the proposed amendment which seek to introduce new parties is likely to delay the hearing of this matter. However, it serves the interest of justice to have all the parties that have an interest in the suit property brought on board to avoid multiplicity of suits. The Respondents can be compensated by an award of costs for the inconvenience they will suffer re-doing their pleadings if need be.

14. Consequently, the court is persuaded to grant the Plaintiff an opportunity to amend the application.

- a. That this Honourable Court does grant leave to the Plaintiff to further amend its Amended Plaint dated 14th February 2020 as underlined and highlighted in blue in the draft Further Amended Plaint annexed.
- b. That the Plaintiff’s Further Amended Plaint is deemed duly filed and
- c. That the 1st and 5th Respondents are awarded costs of this application assessed at Kenya shillings thirty thousand (Kshs 30000) payable within 30 days from today.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER, 2023

A. OMOLLO

JUDGE

