



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 407 OF 2015

BETWEEN

JOHN MANGURU KABIRI & 3 OTHERS.....PETITIONERS

AND

COUNTY GOVERNMENT OF KIAMBU & 6 OTHERS.....RESPONDENTS

RULING

1. The Petitioners seek to amend their petition filed herein on 25 September 2015. The Motion is predicated on the ground that there is need to particularize the claim further to enable the court easily adjudicate on the matters in controversy. The original petition it is stated by the petitioners is lacking in material particulars.
2. By way of background, the original claim by the Petitioner was mainly seeking to enforce the right to information as guaranteed under Article 35 of the Constitution. In particular the Petitioners sought information to enable them prosecute the High Court Civil case No 49 of 2012 and also defend the Environmental and Land Case No 635 of 2012. Both cases were already pending before the court.
3. In their draft amended petition, the Petitioners now state that they seek information to enable them to enforce the right to a clean and healthy environment under Articles 42,69 and 70 of the Constitution. The Petitioners also seek to enforce their right to information to enable them enforce the right to education under Articles 43 and 53 of the Constitution. The Petitioners have apparently abandoned their quest to enforce the right to access justice under Article 48 and 50(1) of the Constitution. The Petitioners however contend that the particulars only seek to clarify the issues they have raised in the two cases pending before both this court as well as the Environment and Land Court.
4. The application was opposed by the Respondents through a prolific Notice of grounds of opposition.
5. The Respondents state that the amendments sought to be made have the potential of prompting a completely new cause of action different from the current one. Additionally, the Respondents also opposed the application on the basis that it is an abuse of the process of this court. The Respondents however concede that leave to amend pleadings ordinarily should not be denied unless the party applying is acting in bad faith.
6. Rule 18 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules ,2013 (hereafter “the Mutunga Rules”) states as follows:

“ A party who wishes to amend its pleadings at any stage of the proceedings may do so with the leave of the court.”

7. It clear from the rule that the application may be made at any time of or stage in the proceedings so long as the trial is not yet concluded: see **Wareham t/a AF Wareham & 2 Others vs Post Office Savings Bank CACA No. 5 of 2002**.The discretion is with the court and is to be exercised judiciously.

8. The general rule is that amendments ought to be freely allowed if the same has been sought without undue delay. It will however be denied in isolated situations. Where therefore the intended amendments would cause undue prejudice and injustice to another party the court ought not allow the amendments: See **Weldon vs Neal [1887] 19 QBD 394**. The court is also to bear in mind that the purpose of amendments is truly to ensure that, if allowed, all matters in controversy are brought to the fore for settlement by the court. The aim is to help set out clearly the issues in controversy.

9. These principles were partly expressed in the case of of **The Institute for Social Accountability & Another vs. Parliament of Kenya & Two Others HCCP No 71 of 2013 [2014]eKLR** where the court stated as follows :

“[17] The issue of amendment of pleadings is not novel and has been the subject of numerous court decisions, the common denominator being that as a general principle, courts will normally allow amendment of pleadings at any stage of the proceedings if it can be done without occasioning injustice or prejudice to the other party and which prejudice can be compensated by an award of costs. See generally Eastern Bakery v Castelino (1958) EA 461 ; Ochieng and Others v First National Bank Of Chicago CA Civil Appeal Number 149 of 1991, Kenyatta National Hospital v Kenya Commercial Bank Ltd & Another [2003] 2 EA.”

10. I am still duly guided.

11. The main objection to the application for leave to amend the Petition was that the Petitioners’ cause of action has changed or has been altered. I however do not think so. The substratum of the Petition was to enforce the right of access to information. That cause is still intact. The Petitioners have sought only to clarify further and with more detail why they need the information. They also seek to meet the test of reasonable precision and clarity in constitutional petitions. In my view, allowing the intended amendments may assist the court further in expeditiously disposing of the issues in controversy.

12. Secondly, I do not view it that the intended amendments will occasion the Respondents any prejudice. The Respondents will have occasion to respond to the particulars , if need be.

13. In consequent, I allow the application dated 25 April 2016 and specifically order as follows:

- a. The Petitioners be and are hereby granted leave to amend the Petition.
- b. The amended Petition annexed to the application dated 25 April 2016 be deemed as duly filed and served.
- c. The Respondents be at liberty to file and serve their respective responses or amended responses to the amended Petition within the next twenty one (21) days from the date hereof
- d. The costs of the application is to be borne by the Petitioners in any event.

14. Orders accordingly

Dated, signed and delivered at Nairobi this 31st day May, 2016

J.L.ONGUTO

JUDGE