



**Morop Distributors (K) Limited & another v Nairobi City County Government & 4 others  
(Environment & Land Case 178 of 2009) [2022] KEELC 3416 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3416 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 178 OF 2009**

**LN MBUGUA, J  
MAY 26, 2022**

**BETWEEN**

**MOROP DISTRIBUTORS (K) LIMITED ..... 1<sup>ST</sup> PLAINTIFF  
JOHN GATHAMA MAINGI, REGENT AUTOMOBILE VALUERS & ASSESSORS  
LTD ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**NAIROBI CITY COUNTY GOVERNMENT ..... 1<sup>ST</sup> DEFENDANT  
JOB KIPNANDI CHEBON ..... 2<sup>ND</sup> DEFENDANT  
N.K BROTHER ..... 3<sup>RD</sup> DEFENDANT  
ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT  
STEP AHEAD LIMITED ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. Coming up for determination is a Notice of Motion application dated June 17, 2021 by the Plaintiff seeking:
  - i. Spent.
  - ii. That the plaintiff be granted leave to file a further further amended Plaintiff.
  - iii. The further further amended Plaintiff be deemed as duly filed upon payment of requisite court fee.
  - iv. That the defendants/respondents be at liberty to file its amended defence.
  - v. That the cost of this application be in the cause.



2. This application supported by the sworn affidavit of Joyce Kangogo Chesaro, Advocate for the plaintiff dated June 17, 2021 is premised on the grounds that the plaintiff had initially sued the 1<sup>st</sup> defendant but later the other parties were enjoined in the suit without its knowledge. The advocate also averred that based on that and having come across new discoveries there was need to further further amend the plaint to address the real issues.
3. The 2<sup>nd</sup> plaintiff in the replying affidavit dated February 16, 2022 sworn by John Gathama Maingi opposes the application on grounds that the amendments would drive the 2<sup>nd</sup> Plaintiff from its position in the suit which will limit its participation in the proceedings adding that the amendments had been brought late into the proceedings. He also averred that the amendments were in conflict with the Further Amended Plaint dated 18<sup>th</sup> October 2018 and the issues the 1<sup>st</sup> plaintiff sought to introduce should be handled in a separate suit.
4. I have considered all the issues raised herein including the submissions of the two plaintiffs. The legal framework appertaining to amendment of pleadings is to be found under Order 8 Rule 3(1) of the [Civil Procedure Rules](#) which provides that;
 

“... 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.”
5. In this case, the 1<sup>st</sup> plaintiff seeks to file a further further amended plaint on grounds that they have come across new evidence, and that the 2<sup>nd</sup> to the 5<sup>th</sup> defendants were claiming interest over the suit property hence the need to amend the pleadings to determine the issues raised.
6. It is trite law that amendments to pleadings prior to hearing of the suit should be freely allowed by court if the amendments aid in the determination of the issues in dispute and do not alter the nature of the case. This was the holding in the Court of Appeal case of [St. Patrick's Hill School Limited v Bank of Africa Kenya Limited](#) [2018] eKLR:
 

“ 17 ... The general rule on this subject 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. (See *Eastern Bakery v Castelino* (1958) EA 461).....

27A. Whether or not the plaintiff is entitled to leave to amend his plaint in accordance to the rules is a discretion to be exercised by the court within the ambit of the principles of natural justice. Lord Denning as he then was put it this way in *Reg v Gaming Board Ex Benalim* 1970 2 QB 417 as follows; “It is not possible to lay down rigid rules as to when the principles of natural justice are to apply nor as to their scope and extent. Everything depends on the subject matter”(emphasis own).
7. I have taken into consideration several factors starting with the age of the case which was filed 13 or so years ago. It is also apparent that the defendants known as Job Kipnandi and N.K Brothers were brought on board this suit way back on April 7, 2010, while the 2<sup>nd</sup> plaintiff was joined in the suit on December 17, 2010. By the time this suit was dismissed for want of prosecution on April 13, 2017, the 2<sup>nd</sup> plaintiff as well as the aforementioned defendants were still in the suit. And when the suit was reinstated, the aforementioned parties were still on record. After the suit was reinstated, the 1<sup>st</sup> plaintiff was represented in court on March 11, 2019 and the issues he is raising now were not mentioned.



8. It is also noted from the court record that this suit was dismissed for want of prosecution and was only reinstated through the efforts of the 2<sup>nd</sup> plaintiff on November 13, 2017. Thereafter, the conduct of the 1<sup>st</sup> plaintiff caused the prosecution of this suit to stall causing the court to give ultimatums as on October 11, 2018 and on July 21, 2020 when 1<sup>st</sup> plaintiff was given a last adjournment.

9. Further, on July 21, 2020, the court had observed as follows;

“It is apparent that the 1st plaintiff is not keen to prosecute this suit”

10. What resonates from the above analysis is that the 1<sup>st</sup> plaintiff had all the time to bring any amendments in good time but he squandered the chances to do so. This court has a constitutional mandate to ensure that justice is administered expeditiously and for this to happen, this court is called upon to invoke Active Case Management principles and techniques.

11. In the case of *Lawrence Kinyua Mwai v Nyariginu Farmers Co Ltd & another* [2019] eKLR, while dismissing close to 18 or so applications in one go, I stated thus;

“In exercising its judicial authority this court has a duty to facilitate just and expeditious determination of proceedings. One of the cardinal principles in our constitution is “the expeditious delivery of justice” –see article 159 (2) (b) of the Constitution of Kenya, which in effect codifies the 17<sup>th</sup> century maxim “Justice delayed is justice denied”. This means that if justice is not provided in a timely manner to the parties, it loses its importance and it violates the human rights of the litigants and their families. That is precisely why rights to speedy trials are incorporated in law worldwide.

The circumstances of this case where the dispute has been in the legal arena for decades demand that this court imposes Active Case Management in order to achieve the overriding Objective set out under section 1A and 1B of the Civil Procedure Act even if it appears to be rather late in the day to do so, in order to have a closure in this file. Active Case Management is one of the best practices to combat case backlog and it is anchored on the courts ability to exercise Judicial control over the legal processes with a view to ensuring that the overriding objective is achieved.

Active Case management enhances processing efficiency, promotes court control of cases, and provides judicial officers with the tools that may be used to dispose off a case efficiently. These techniques reduce delays and case backlogs, and provide information to support the strategic allocation of time and resources - all of which encourage generally better services from courts”.

12. Considering that the 1<sup>st</sup> plaintiff has been granted several last adjournments for the hearing of the case, keeping in mind that this suit was dismissed but was only reinstated through the efforts of 2<sup>nd</sup> plaintiff, noting that the plaintiffs share the same statement of the claim ( as observed by the court earlier on), being aware that I have just struck out a suit filed by the plaintiff in 1998 ( 133 of 2020 formerly HCCC.2458 OF 1998) , and noting that this suit is now over 13 years old, I decline to allow the application for amendment.

13. The disposal orders are given as follows:

1. The application dated June 17, 2021 is hereby dismissed with costs to the 2<sup>nd</sup> plaintiff.
2. The parties are to file and serve their trial bundles containing their respective pleadings, comprehensive statements of witnesses and documents to be relied on within 30 days.



3. The matter shall forthwith be listed for hearing and shall not be adjourned at the instance of the 1<sup>st</sup> plaintiff.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF MAY, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

J. Chesaro for the 1st Plaintiff

Amolo for the 2nd Plaintiff

Chetalum holding brief for Ms. Mutai for the 2nd Defendant

Court Assistant: Eddel

