



Demeure Cloud Nine Limited v Nairobi City County Government (Environment and Land Case Civil Suit 285 of 2019) [2022] KEELC 3400 (KLR) (27 July 2022) (Ruling)

Neutral citation: [2022] KEELC 3400 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 285 OF 2019**

**SO OKONG'O, J
JULY 27, 2022**

BETWEEN

DEMEURE CLOUD NINE LIMITED PLAINTIFF

AND

NAIROBI CITY COUNTY GOVERNMENT DEFENDANT

RULING

1. The application before the court is a notice of motion dated February 28, 2022 brought by the plaintiff in which the plaintiff is seeking the following orders;
 1. That leave be granted to the plaintiff to amend its plaint in terms of the draft amended plaint annexed to the application.
 2. That the costs of the application be in the cause.
2. The application is based on the grounds set out on the face thereof and on the supporting affidavit of Jacob Mbao sworn on 2February 7, 2022. In summary, the plaintiff has contended that its brought this suit to restrain the defendant from interfering with its approved development on all that parcel of land known as LR No 1/854(“the suit property”). The plaintiff has averred that the actions of the defendant complained of had also caused it pecuniary losses which were not foreseen as at the time the suit was filed and as such could not be quantified and included as part of the claim. The plaintiff has contended that the amendment sought is intended to enable the court to address all the issues in contention between the parties. In its draft amended plaint, the plaintiff has averred that as a result of interference by the defendant with the construction works on the suit property, it incurred extra costs amounting to Kshs 92,925,951.35 that it paid to the contractor for the delay in completion of the works attributable to the defendant. In the draft amended plaint, the plaintiff has added a new claim for special damages in the sum of Kshs 92,925,951.35.



3. The application is opposed by the defendant through grounds of opposition dated June 30, 2022. The defendant has contended that the application is frivolous and a gross abuse of the process of the court. The defendant has contended further that the amendment sought is not supported by any evidence. The defendant has urged the court to dismiss the application with costs.
4. The application was argued on July 7, 2022. The plaintiff's advocate submitted that the court has power to grant the leave sought. The plaintiff submitted that whether or not the claim sought to be introduced through the amendment sought has any basis can only be determined at the trial. The plaintiff submitted that the defendant stands to suffer no prejudice if the application is allowed. In his submission in reply, the defendant's advocate submitted that there is no evidence before the court in support of the claim that the plaintiff seeks to introduce through the amendment sought and as such the application has no basis.
5. I have considered the application together with the affidavit filed in support thereof. I have also considered the defendant's grounds of opposition filed in opposition to the application. Finally, I have considered the submissions by the advocates for the parties. The principles upon which this court exercises its discretion in applications for amendment of pleadings are now well settled. In *Bullen and Leake & Jacob's Precedents of Pleading*, 12th Edition that was cited in the case of *Joseph Ochieng & 2 others v First National Bank of Chicago*, Civil Appeal No 149 of 1991, [1995] eKLR, the authors stated as follows:

“...power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages) that as a general rule however late the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side;..... ; that the proposed amendment must not be immaterial or useless or merely technical;.....; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action;”
6. What I gather from the foregoing is that, applications for leave to amend pleadings should be freely allowed and at any stage of the proceedings provided that the amendment or joinder as the case may be will not result in prejudice or injustice to the opposing party which cannot be properly compensated for in costs. See also, *Central Kenya Ltd v Trust Bank Limited & 4 others*, Court of Appeal at Nairobi, Civil Appeal No 222 of 1998. I am of the view that parties to a suit should be allowed to make such amendments as may be necessary for the determination of real questions in controversy between them or to avoid multiplicity of suits, provided, no inconsistent cause of action is introduced, no vested interest or accrued legal right is affected and no injustice is caused to the other side.
7. What is expected of an applicant for leave to amend a pleading is to satisfy the court that the amendment sought is necessary for the determination of real questions in controversy between the parties. The onus then shifts to the party opposing such amendment to show that the amendment sought would result in prejudice to him which cannot be compensated in costs and/or that the amendment sought would introduce an inconsistent cause of action and/or that the amendment if allowed would take away interests or legal rights that have accrued to him and/or that the amendment would cause injustice to him.
8. I have perused the affidavit in support of the plaintiff's application together with the draft amended plaint annexed thereto. I am satisfied that the amendment sought would enable this court to effectually and completely adjudicate upon and settle all questions in controversy in this suit. I am not persuaded that the proposed amendment will prejudice the defendant or that the same would cause it any



injustice. I am in agreement with the plaintiff that the issue raised by the defendant about the merit of the claim sought to be introduced by the plaintiff through the proposed amendment goes to the merit of the plaintiff's special damages claim which can only be determined at the trial.

9. For the foregoing reasons, I find merit in the plaintiff's notice of motion application dated February 28, 2022. The application is allowed on the following terms;
 1. The plaintiff is granted leave to amend its plaint in terms of the draft amended plaint annexed to the affidavit in support of the application.
 2. The amended plaint shall be filed within 14 days from the date hereof.
 3. The defendant shall be at liberty to amend its defence within 14 days of service of the amended plaint.
 4. The plaintiff shall be at liberty to file a reply to amended defence if any within 7 days of service of the same.
 5. The costs of the application shall be in the cause.

DELIVERED AND SIGNED AT NAIROBI THIS 27TH DAY OF JULY 2022

S OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr Malanga for the plaintiff.

Mr Kinyanjui for the defendant.

Ms C Nyokabi-court assistant.

