



REPUBLIC OF KENYA



**Sai Holdings Limited; Prideinn Hotels & Investments Ltd & 3 others (Defendant)  
(Environment & Land Case 143 of 2013) [2022] KEELC 3381 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3381 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 143 OF 2013**

**NA MATHEKA, J**

**JULY 27, 2022**

**IN THE MATTER OF**

**SAI HOLDINGS LIMITED ..... PLAINTIFF**

**AND**

**PRIDEINN HOTELS & INVESTMENTS LTD ..... DEFENDANT**

**SHABBIR MOHAMED KASSAM ..... DEFENDANT**

**MOHAMMED HASNAIN SHABBIR NOORANI ..... DEFENDANT**

**GLORY HOTELS & INVESTMENTS LIMITED ..... DEFENDANT**

**RULING**

1. The first application is dated March 16, 2022 and is brought under the provisions of sections 1A, 1B & 3A and Order 8 of the Civil Procedure Act seeking the following orders;
  1. This application be certified urgent and be heard Ex parte in the first instance.
  2. The Plaintiff be granted leave to amend the Plaintiff in the manner shown in the draft attached hereto and upon grant of leave the Plaintiff be deemed to have been duly amended and filed.
  3. Costs of this application be provided for.
2. It is based on the fact that this suit was stayed in 2013 pending arbitration as it had been filed for purposes of interim orders pending arbitration. The matter had been pending in arbitration from 2013 up to 2021 when the arbitrator upheld an objection by the defendants on jurisdiction. The dispute must now be determined by this court. Determination of the dispute by this court necessitates an amendment to the plaintiff in the manner shown in the draft. No prejudice will be caused to the defendants as it is essentially the same dispute that will be determined by this court instead of by the Arbitrator. The matter is scheduled for mention on 17.3.2022 having been fixed for that date when it last came up on a Notice to Show Cause.



3. The respondents/defendants stated that the plaintiff's application to amend the plaint is an abuse of the court process and should be dismissed with costs. That if the sought amendment is allowed, the same shall cause injustice and unfairly compromise the Defendants' legal rights. They annexed the statement of claim by the plaintiff in the concluded arbitration proceedings

The second application is dated April 4, 2022 and is brought under Order 8 Rule 3(5), Order 51 of the Civil Procedure Rules seeking the following orders;

1. The defendants be granted leave to amend their defence as per the annexed draft amended defence and counterclaim.
  2. The costs of this application be in the cause.
4. It is based on the grounds that the proposed amendment shall not occasion any prejudice upon the plaintiff. That it is in the interest of justice that the prayers sought herein be allowed. The plaintiff did not oppose the defendants' application to amend the defence.

This court has considered both applications and submissions therein. The statutory provisions of section 100 of the Civil Procedures Act gives the court general power to amend proceedings.

5. 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.”

According to Order 8, Rule 5 of the Civil Procedures Rule states that,

For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.

6. In AAT Holdings Limited v Diamond Shields International Ltd (2014) eKLR it was held as follows,

The law on amendment of pleadings is tempered with discretion so that a court of law, properly guided by principles of law, should be able to allow an amendment for purposes of determining real question or issue in controversy, which is what adjudication of cases and effectual dispensation of substantive justice to parties under article 159 of the Constitution.”

7. In the case of Harrison C Kamau v Blue Shield Insurance Co. Ltd (2006) eKLR, the court stated that;

the amendments of pleadings.....(is) aimed at allowing a litigant to plead the whole of the claim he (is) entitled to make in respect of his cause of action. A party would be allowed to make such amendments of pleadings as (are) necessary for determining the real issue in controversy or avoiding a multiplicity of suits, provided:

- (i) There has been no undue delay;
- (ii) No new inconsistent cause of action (is) introduced;
- (iii) No vested interest or accrued legal right (is) affected; and
- (iv) The amendment (can) be allowed without injustice to the other side.....”



8. Similarly, the court in the case of *Joseph Ochieng & 2 others v First National Bank of Chicago* Civil Appeal No. 149 of 1999 stated as follows;

The ratio that emerges out of what was quoted from the same book is that powers of the court to allow amendment is to determine the true substantive merits of the case, amendments should be timeously applied for; 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 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, that the plaintiff will not be allowed to reframe his case or claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts.”

9. In the instant case, the plaintiff states that this suit was stayed in 2013 pending arbitration as it had been filed for purposes of interim orders pending arbitration. The matter had been pending in arbitration from 2013 up to 2021 when the arbitrator upheld an objection by the defendants on jurisdiction. the dispute must now be determined by this court. Determination of the dispute by this court necessitates an amendment to the Plaint in the manner shown in the draft. No prejudice will be caused to the defendants as it is essentially the same dispute that will be determined by this court instead of by the Arbitrator. I find that the court has power to so amend at any stage of the proceedings, as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith. I find that the amendment is necessary for the purpose of determining the real question or issue raised by and/or depending on the proceeding as they flow from the same cause of action. I find both applications are merited and I grant them as prayed. There will be no orders as to costs on both applications.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 27TH DAY OF JULY 2022.**

**N.A. MATHEKA**

**JUDGE**

