



**Shah v Paramount Bank Ltd & 4 others (Environment & Land Case
E217 of 2020) [2022] KEELC 13791 (KLR) (18 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13791 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E217 OF 2020
LN MBUGUA, J
OCTOBER 18, 2022**

BETWEEN

ZAVERCHAND RAMJI SHAH PLAINTIFF

AND

PARAMOUNT BANK LTD 1ST DEFENDANT

KURWA LIMITED 2ND DEFENDANT

KARIM KANANI 3RD DEFENDANT

ALDERMEN LIMITED 4TH DEFENDANT

CHIEF LAND REGISTRAR, NAIROBI 5TH DEFENDANT

RULING

1. Before me is an application dated July 12, 2022 where the 1st defendant is seeking orders that they be granted leave to amend their statement of defence dated March 9, 2021. The applicant contends that the suit was filed outside the limitation period described under section 4 subsection 1 of the [Limitations of Actions Act](#), thus the proposed amendments touches on a legal point that goes into the jurisdiction of the matter.
2. The applicant avers that the cause of action is alleged to have occurred in the year 2008, hence the plaintiff ought to have instituted the suit by April 21, 2014. Counsel for the applicant contends that the issue of limitation was not noted when they were drafting the statement of the defence.
3. None of the defendants are opposing the said application. The plaintiff has opposed the application *vide* their grounds of opposition dated July 25, 2022 where they contend that the proposed amendment is malicious as it will change the character of the suit. It is averred that the 1st defendant had filed a preliminary objection raising the issue of res judicata and now they are raising the issue of limitation, yet the real issue in dispute relates to the fraudulent activities of the 1st defendant.



4. The issue for determination is whether; leave to amend the defence as sought is merited.

Order 8, rule 3 (1) *Civil Procedure Rules, 2010* provides:

“ Subject to order 1, rules 9 and 10, order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, 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. The Court of Appeal for East Africa in the *locus classicus* case of *Eastern Bakery v Castelino (1958) EA 461* held that amendments sought before the hearing should be freely allowed if they can be made without injustice to the other side.

6. I have considered all the issues raised herein, I find that this suit is at the early stages of prosecution, whereby the hearing has not taken off. It follows that the plaintiff will have a chance to respond to the proposed amendments by filing a reply to that defence.

7. In the circumstances, I find that the application dated July 12, 2022 is merited and the same is allowed such that; the amended defence is to be filed and served upon all parties within 7 days. The respondents thereof are at liberty to amend their pleadings accordingly within 14 days from the date of service. The applicant shall pay the costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N MBUGUA

JUDGE

In the presence of:-

Shikonda holding brief for Ojudwa for plaintiff

M/s Muthemba holding brief for Ngatia for 1st defendant

Isahi holding brief for Nganga for 2nd defendant

Okello holding brief for Kihiko for 3rd defendant

Wachira for 4th defendant

Court assistant: Eddel

