



Kenya Anti-Corruption Commission v Korane & 6 others (Civil Suit 37 of 2009) [2022] KEELC 13705 (KLR) (13 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13705 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
CIVIL SUIT 37 OF 2009
M SILA, J
OCTOBER 13, 2022**

BETWEEN

KENYA ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

ALI BUNOW KORANE 1ST DEFENDANT

ADROIT DEVELOPERS LIMITED 2ND DEFENDANT

BARCLAYS BANK OF KENYA LIMITED 3RD DEFENDANT

WILSON GACANJA 4TH DEFENDANT

RAINYDAYS LIMITED 5TH DEFENDANT

ASHOK LABSHANKER DOSHI 6TH DEFENDANT

MAHESH K. DOSHI 7TH DEFENDANT

(Application by the plaintiff to further amend the plaint; application allowed)

RULING

1. The application before me is that dated December 8, 2020 filed by the plaintiff. The plaintiff seeks leave to amend the plaint. The application is opposed by the 1st defendant. To put matters into perspective, this suit was commenced through a plaint filed by the applicant. The plaintiff averred that she was filing the suit to recover public land that was part of Moi International Airport Mombasa, and which it claimed was vested upon the Kenya Airports Authority. It pleaded that out of the airport land was carved the land parcel MN/VI/3XXX (the suit land). The original plaint had four defendants, respectively being Ali Bunow Korane, Adroit Developers Limited, Barclays Bank of Kenya Limited, and Wilson Gacanja. The plaintiff pleaded that title to the suit land was issued to the 1st defendant Ali Bunow Korane, who then transferred his interest to Adroit Developers Limited, the 2nd



defendant. This title was charged to Barclays Bank, the 3rd defendant. The 4th defendant was the former commissioner of lands who it is said illegally issued title to the 1st defendant. In the plaint, the plaintiff wished to have this title cancelled. An application was filed to have the 2nd and 3rd defendants removed from the suit. This application was allowed in ruling delivered on October 11, 2012 by Ibrahim J (as he then was). The plaintiff later moved to amend the plaint to add three more parties being Rainydays Limited, Ashok Labshanker Doshi and Mahesh K Doshi as 5th, 6th and 7th defendants, since the title to the suit had been transferred to Rainydays Limited and the other two persons were its directors. Despite being added, no particulars of fraud were pleaded against them. From what I can see, the plaintiff wishes to further amend the plaint so as to plead particulars of fraud and illegality against the 5th, 6th and 7th defendants.

2. Only the 1st defendant has opposed the motion through grounds of opposition and a replying affidavit sworn by the 1st defendant. In the grounds of opposition, it is inter alia stated that the application is frivolous as the plaintiff had previously amended the plaint; that there has been undue delay in making the application; that the amendment introduces a new and inconsistent cause of action which will change the character of the case; that the amendment will constitute a new suit; that the amendment is only meant to subvert justice. In the supporting affidavit, the 1st defendant has contended that the property was legally allocated to him.
3. I have considered the application, the reply, and the submissions made by counsel.
4. This is an application for amendment. courts are generally liberal when it comes to such applications for the purpose is to allow the parties to fully and properly plead their case.
5. I have assessed the application, and contrary to the position of the 1st defendant that the application will introduce a new cause of action, there is no new cause of action being introduced. The land in issue is the same; the parties are the same; and the claim remains the same, that is, that the suit land was illegally allocated out of public property. The only additions are elaborations on the particulars of fraud on the new parties. I in fact see no prejudice to at all to the 1st defendant or indeed to the other parties in the suit. This suit is yet to be heard and if the defendants so wish, they can file amended defences to the further amended plaint.
6. Given the above, I allow the application dated December 8, 2020. The amended plaint be filed and served within the next 14 days.
7. I make no orders as to costs.
8. Orders accordingly.

DATED AND DELIVERED THIS 13TH DAY OF OCTOBER, 2022

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

MOMBASA

