



**Spruce Properties LLP v Malu (Sued as the Chairman of Karen  
Langata District Association) & 2 others (Environment & Land Case  
E186 of 2021) [2022] KEELC 13658 (KLR) (13 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13658 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E186 OF 2021**

**LN MBUGUA, J  
OCTOBER 13, 2022**

**BETWEEN**

**SPRUCE PROPERTIES LLP ..... PLAINTIFF**

**AND**

**VICTOR MALU (SUED AS THE CHAIRMAN OF KAREN LANGATA  
DISTRICT ASSOCIATION) ..... 1<sup>ST</sup> DEFENDANT**

**KAREN LANGATA DISTRICT ASSOCIATION ..... 2<sup>ND</sup> DEFENDANT**

**CYNTHIA RYAN (SUED AS THE SECRETARY OF KAREN LANGATA  
DISTRICT ASSOCIATION) ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Before me is an application dated March 28, 2022 in which the applicant plaintiff seeks orders for the striking of the amended memorandum of appearance dated February 16, 2022 and all the subsequent pleadings filed by the Gitonga Kamiti Kairaria Advocates and the said advocates be given limited time within which to file and serve an application to cease acting for any of the defendants herein; plus costs.
2. The applicant contends that the purported amendment to a memorandum of appearance has no basis in law and is fatally defective. It is averred that failure by the defence advocates to formally move the court to regularize what they internally refer to as an issue of representation is delaying the prosecution of this matter.
3. The 2nd defendant Dr Ramano Kiome has filed a rather lengthy replying affidavit dated August 4, 2022 where he avers that he is the former Chairman (June 2021 – March 2022) of Karen Langata District Association a duly registered resident’s association that is committed to among other things the promotion and protection of a well-planned safe and environmentally conducive residential neighbourhood in the Karen Lang’ata District in Nairobi. He was initially elected as vice chairman of



the organization with Victor Malu as chairman and Cynthia Ryan as secretary who are named as the 1st and 3rd defendants in these proceedings, but both Victor Malu and Cynthia Ryan resigned from the leadership of the association and notified the plaintiff of that fact in writing on two occasions;

4. That despite this notification to the plaintiff's counsel that Mr Victor Malu and Cynthia Ryan had resigned from their position as chairman and secretary of the association the plaintiff did not take steps to remove their names from the record by way of amendment, but instead sent a letter dated June 28, 2021 in which they asked the association's advocates on record to confirm whether they had conflicting instructions which was answered in the negative in a letter dated July 2, 2021 and suggested to them that it is upto the plaintiff to amend its pleadings to reflect the fact that the two were not officials. The plaintiff's advocates did not heed to this suggestion.
5. The deponent contends that the erroneous naming by the plaintiff of Victor Malu and Cynthia Ryan as parties to these proceedings cannot be cured by striking out the amended memorandum of appearance and the pleadings filed on behalf of the association or by an application by the association's advocates to cease acting for the two officials. However, an error in a memorandum of appearance or in any document can be amended under the general power to amend under order 8 rule 5 [Civil Procedure Rules](#) and an amendment can be effected before the close of the pleadings without leave of court.
6. It is further avered that the resident's association (KLDA) has duly filed a defence and counterclaim and a trial bundle to which the plaintiff has responded by filing a reply to defence and defence to counterclaim. Thus the plaintiff should amend its pleadings accordingly to reflect the reality of the resignations of Victor Malu and Cynthia Ryan and not to apply to court to strike out the amended memorandum of appearance.
7. On July 25, 2022, the court gave directions for the application to be heard by way of written submissions of which the applicant was to file and serve their submissions by August 25, 2022 while respondents were to file theirs by September 9, 2022. Documents filed outside the given timeline were to stand as expunged. There was no compliance with these directions hence applicant's submissions stand as expunged. It is noted that no submissions have been filed by the respondents.
8. I have considered all the arguments proffered herein. The records indicate that the firm of Gitonga Kamiti Kairaria advocate filed a memorandum of appearance on June 10, 2021 for all the three respondents. Months later, a statement of defence dated February 16, 2022 was filed by the same firm of advocates, but it only related to 2nd defendant this time round.
9. On February 17, 2022 counsel for defendants addressed the court as follows:

' We are only appearing for 2nd defendant who has been elevated to position of chairman. The 1st and 3rd defendants resigned before case was filed but this had not been brought to our attention.'
10. In paragraph 4 of the affidavit of the 2nd defendant, he avers that both the 1st and 3rd respondents resigned from the association and they communicated the decision to plaintiff's advocates via their email dated June 2, 2022.
11. From the foregoing, it is apparent that the communication to the advocates for the plaintiff regarding the status of 1st and 3rd defendants in the association known as KLDA was being made just at the time the suit was being filed, noting that the plaint is dated May 27, 2021. The advocate for the respondents filed a memorandum of appearance on June 10, 2021 ostensibly without knowledge of the status of the three respondents. He must have become aware of such status soon thereafter hence the filing of the defence only for 2nd defendant.



12. In such circumstances, the counsel for the respondents need to cease acting for 1st and 3rd defendants and this cannot be done via an amendment to a memorandum of appearance.
13. It is noted that pleadings form the primary documents in which the trial is anchored upon. As noted by the plaintiffs advocate, it would certainly be difficult to progress the case further when the pleadings are irregular.
14. In the circumstances, the application is allowed in the following terms: The firm of Gitonga & Kamiti Kairaria advocates are directed to file an application to cease acting for 1<sup>st</sup> and 3<sup>rd</sup> defendants within 30 days from the date of this ruling failure to which the court will consider the said advocates as having duly entered appearance for the two parties. Any amended memorandum of appearance is hereby struck out. Each party to bear their own costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Muchiri holding brief for Mr. Luseno for Plaintiff/Applicant

Kairaria for the 2<sup>nd</sup> Respondent/Defendant

Court assistant: Eddel/Joan

