



**Muchalwa v Abdalla & 3 others (Environment & Land Case
131 of 2015) [2022] KEELC 15243 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15243 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 131 OF 2015**

**EO OBAGA, J
DECEMBER 8, 2022**

BETWEEN

HENRIETTA W. MUCHALWA PLAINTIFF

AND

SIAMA HAMISI ABDALLA 1ST DEFENDANT

SHABAN KIPLAGAT KIPRONO 2ND DEFENDANT

HASSAN KOMEN CHEROP 3RD DEFENDANT

**TRUPHENA JEPKOSGEI KURGAT ALIAS TRUPHENA JEPKOSGEI
KURGAT 4TH DEFENDANT**

RULING

1. This is a ruling in respect of notice of motion dated February 14, 2022 in which the 1st and 2nd defendants/applicants seek leave of court to further amend their defence and counter-claim. The applicants contend that they were granted leave to amend defence and counter-claim on November 6, 2017 and that they proceeded to file an amended defence and counter-claim on November 13, 2017.
2. They state that it has however become necessary to have the said amended defence and counter-claim to be further amended in order to bring all matters in dispute before the court for adjudication. The applicant states that their claim is based on adverse possession and there is no need to retain the particulars of fraud which had been pleaded. They state that the amendment sought does not introduce a new cause of action and will not cause any prejudice to the plaintiff/respondent.
3. The applicant's application is opposed by the plaintiff/respondent based on a replying affidavit sworn on April 20, 2022. The Respondent contends that the applicants' application is incompetent, misconceived and is an abuse of the process of the court. The respondent states the applicants were granted leave to amend the defence and counter-claim which they did and introduced particulars of



fraud and concealment of material facts against the respondents. The respondent responded to the amended defence and counter-claim and has testified on the same and closed her case.

4. The respondent contends that the applicants have introduced a new cause of action by alleging that a judgement which had been delivered in Eldoret CMCC No 447 of 2012 was made without jurisdiction. The respondent therefore argues that the intended amendment will prejudice her since she had testified and that amendments will force her to re-open her case.
5. The respondent further states that the amendments are being sought after inordinate delay. The 4th defendant/respondent opposed the applicants' application through grounds of opposition in which she contends that the applicants should have appealed against the judgment of the lower court and not through amendments.
6. In a further affidavit sworn by the applicants, the applicants contend that they were not parties to the lower court judgment and will therefore not have appealed against it. On the issue of jurisdiction, the applicants state that this court has jurisdiction to deal with matters relating to jurisdiction in the lower court.
7. The applicants further state that the judgment of the lower court was obtained based on false information. The applicants state that it was due to a mistake on the part of their lawyer that the pleadings were not put in order and this mistake should not be visited upon them.
8. I have gone through the applicants' application as well as the opposition to the same by the plaintiff/respondent and the 4th defendant/respondent. I have also gone through the submissions by the applicants and the plaintiff/respondent. The only issue for determination is whether the applicants have met the threshold for grant of leave to amend.
9. In *Central Kenya Ltd v Trust Bank Ltd & 5 others* (2000) eKLR the Court of Appeal stated as follows:-

“The settled rule with regard to amendment of pleadings has been concisely stated in Vol 2, 6th Ed at P 2245, of the AIR Commentaries on the Indian Civil Procedure Code by Chittaley and Rao, in which the learned authors state:-

“that a party is allowed to make such amendments as maybe necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.”
10. The Court of Appeal in *Central Kenya Ltd* case (supra) further stated as follows:-

“Hence the guiding principle in applications for leave to amend is that all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case maybe, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs (see, *Beoco Ltd v Alfa Laval Co Ltd* (1994) 4 ALL ER 464.”
11. In the instant case, the applicants in their affidavit in support of the application stated that the amendment was basically meant to do away with particulars of fraud and misrepresentation. They later changed tune in their further affidavit when they said that they wanted to introduce the issue of jurisdiction. This was after the plaintiff/respondent stated that in her affidavit that they were introducing a new cause of action.



12. The amendment by the Applicants if allowed will introduce a new cause of action. The plaintiff/respondent has already closed her case. If amendments were to be allowed, this will greatly prejudice her.
13. The applicants were allowed to amend their defence and counter-claim in 2017. They are again coming to seek amendment after five (5) years. There is clearly undue delay in this application. To allow an amendment which is brought after inordinate delay, introducing a new cause of action, is prejudicial and amounts to an abuse of the court process will greatly prejudice the plaintiff/respondent who has closed her case.
14. It is patently clear that the applicants' application is against all the conditions set out in the *Central Kenya Ltd* case (supra). I therefore find that the applicants' application is devoid of merit. The same is dismissed with costs to the plaintiff/respondent and the 4th defendant/respondent.
25. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 8TH DAY OF DECEMBER, 2022.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Oduor for 4th Defendant.

Ms. Salim for Plaintiff.

Ms. Rop for 1st, 2nd and 3rd Defendant.

Court Assistant –Albert

