



**Wainaina v Stone Masters Limited & another (Environment & Land
Case 49B of 2022) [2025] KEELC 3603 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3603 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 49B OF 2022**

JM ONYANGO, J

MAY 5, 2025

BETWEEN

PETER NJOROGE WAINAINA PLAINTIFF

AND

STONE MASTERS LIMITED 1ST DEFENDANT

DIAMOND FAZUL VELJI 2ND DEFENDANT

RULING

1. What is before me for determination is the 1st Defendant's Notice of Motion dated 22nd October 2022 brought pursuant to Order 8 Rule 3 of the Civil Procedure Rules seeking leave to amend the Defence and Counterclaim.
2. The application is predicated on the affidavit of Joseph Mbeva Kiswii, a Manager of the 1st defendant sworn on the 22nd October 2024. The main reason given for the amendment is that the 1st defendant inadvertently omitted to seek a prayer that after the cancellation of the Plaintiff's title, the court should order for the title to be issued in favour of the 1st defendant. He avers that the proposed amendment will enable the Defendant plead his entire claim.
3. The application is resisted by the Plaintiff and the 2nd defendant. In his Replying affidavit sworn on 10th December 2024, the Plaintiff accuses the Applicant of inordinate delay considering that the defence sought to be amended was filed way back in 2023. He deposes that he would be prejudiced if the amendment is allowed as he has already testified and closed his case.
4. The only issue for determination is whether the 1st defendant should be granted leave to amend his Defence.



Analysis and Determination

5. Amendment of pleadings is governed by Order 8 Rule 3 (1) of the Civil Procedure Rules which provides that:

Subject to order 1 rules 9 and 10. Order 24 rule 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.

6. Order 8 Rule 3 (5) provides that

“An amendment may be allowed under sub-rule 2 notwithstanding that its effect will be to add or substitute a new cause of action, if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has been claimed in the suit by the party applying for leave to make the amendment.

7. In the case of *Ochieng v First National Bank of Chicago* Civil Appeal No. 147 of 1991 cited in the case of *St. Patrick ‘s Hill Scholl v Bank of Africa Kenya Limited* [2018] eKLR the Court of Appeal set out the

principles under which courts may grant leave to amend pleadings as follows:

- a. “The power of the court to allow amendments is intended to determine the true substantive merits of the case.
- b. The amendment should be timeously applied for
- c. The power to amend can be exercised by the court at any stage of the proceedings
- d. As a general rule, however late the amendment is sought to be made, it should be allowed if made in good faith provided costs compensate the other side
- e. The plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint, the Defendant would be deprived of his right to rely on the Limitations Act subject however to the powers of the court to still allow an amendment notwithstanding the current period of limitation.”

8. In the case of *Central Kenya Limited v Trust bank Limited* (2002) 2E.A 365 the court held that

“a party is allowed to make such amendments as may be 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 the amendment can be allowed without injustice to the other side.”

9. Additionally in In *Josiah Magena v Wakenya Pamoja Sacco Society Ltd, Nrb ELRC Cause no. 510 of 2014* Mbaru J held as follows:

“The court has discretionary power to amend pleading at any stage before judgment for purposes of determining the real questions or issues which have been raised by the parties. That discretionary power is exercised so as to do justice to the case. However, the said discretion must be exercised judicially and with prudence and not whimsically.



10. This was well articulated in *Institute for Social Accountability & Another v Parliament of Kenya & 3 others* [2014] eKLR, where the court observed that:

“The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings.”

11. What can be gleaned from the above decisions is that the court has a wide discretion to amend pleadings at any stage of the proceedings so to bring out the real issues in controversy between the parties and on such terms as to costs as may be just. The principles of law with regard to amendment of pleadings, are underpinned by the sacred and sacrosanct principles of fairness, equity, equality, reasonableness, lawfulness, good conscience and morality.

12. In the instant suit, the amendment is being sought after a period of 12 years and after the 2nd Defendant has testified. Although I agree that the application has been made after a long period of delay, the proposed amendment is necessary in order to resolve all the issues in controversy. The amendment does not materially alter the 1st defendant’s defence. It appears that the evidence of the 2nd defendant was taken first as he had suffered a stroke and should the need arise for him to be recalled, he can testify virtually. In my view any prejudice that may be suffered by the Plaintiff and 2nd defendants can be compensated by costs.

13. I have carefully considered the application, affidavits and the Plaintiff’s submissions, Even though I appreciate the frustration of the Plaintiff and 2nd defendant considering that this case has been in court for 12 years, I am of the view that justice will be served if the 1st defendant is allowed to amend his defence. Consequently, I find merit in the application and I grant it and make the following orders:

- a. The 1st defendant is granted leave to amend his defence in terms of the annexed draft Amended Defence;
- b. The 1st Defendant shall file the Amended Defence together within 7 days.
- c. The Plaintiff shall file and serve his Defence to the Amended Defence if need be, within 14 days after service.
- d. The Applicant shall bear the costs of this application.

DATED, SIGNED AND DELIVERED AT THIKA THIS 5TH DAY OF MAY 2025

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J. M ONYANGO
JUDGE

In the presence of:

1. Mr Wachira for Mr. Kanyi for the Plaintiff
2. Miss Maina for Mr. Njuru for the Defendant
3. Mr Wanjohi for the 2nd Defendant

Court Assistant: Hinga

