



**Thuo Commercial Agencies Limited v Nakuru Workers Housing Co-operative Society Limited
(Environment & Land Case 558 of 2013) [2024] KEELC 589 (KLR) (9 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 589 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 558 OF 2013
A OMBWAYO, J
FEBRUARY 9, 2024**

BETWEEN

THUO COMMERCIAL AGENCIES LIMITED PLAINTIFF

AND

**NAKURU WORKERS HOUSING CO-OPERATIVE SOCIETY
LIMITED DEFENDANT**

RULING

1. This application has come to court for orders that this Honorable Court be pleased to to reopen the suit and grant leave to the Defendant to amend the Statement of Defence and deem the annexed amended Re Further Amended Statement of Defence duly filed subject to payment of the requisite court fee. That the costs of the application be provided for.
2. The application is based on grounds that Judgment on the suit was slated for 7th December, 2023. The Defendant seeks to amend the Statement of Defence only to include points of law on limitation of action to the effect that the plaintiffs claim for breach of agreement and recovery of land are time barred respectively under Sections 4(1) (a) and 7 of the *Limitation of Actions Act* based on the evidence before the court, to enable the honorable Court determine the real issues in controversy between the parties. That it is mandatory to plead points of law, which had been inadvertently omitted. The Plaintiff is yet to effect service of written submissions upon the Defendant as ordered by this honorable court. The plaintiff will not be prejudiced
3. The application is supported by the affidavit of John Mwangi who states that he is the Secretary to the defendant/applicant hence duly authorized to swear this affidavit in support of the application for amendment of the Statement of Defence. That Judgment in the main suit is slated for 7th December 2023 and he is informed by his advocate that the amendment seeks to only raise issues of law to enable the court determine real issues in controversy and will not require any additional evidence. This is the



only opportunity for the innocent defendant to include the mandatory points of law in the Statement of Defence that had inadvertently been omitted.

4. He was informed by his advocate and he verily believe to be true that they are yet to be served with the Plaintiffs written submissions. The plaintiff does not stand to suffer any prejudice. The application is opposed.
5. The law as regards the grant of leave to amend is well settled. The general rule on this subject is that amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side; and there is no injustice if the other party can be compensated by costs. A wider footage on the issue was given in the case of *Ochieng and 2 others v First National Bank of Chicago* (1995) eKLR, where the court of Appeal clearly set out the principles upon which Courts may grant leave to amend pleadings. The same is as follows:
 - a) the power of the court to allow amendments is intended to determine the true substantive merits of the case;
 - b) the amendments should be timeously applied for;
 - c) power to amend can be exercised by the court at any stage of the proceedings;
 - d) that as a general rule, however late the amendment is sought to be made, it should be allowed if made in good faith provided costs can compensate the other side; and
 - 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 limitations Act subject however to powers of the court to still allow and amendment notwithstanding the expiry of current period of limitation.
6. I have considered the application and the submissions on record and do find that this case was closed for submissions on 19th September 2023 and judgment was scheduled on 7th December 2023. The application was made on 23rd November 2023 a few days to the judgment and more than 2 months after the close of defence case and therefore the application has not been made timeously. The statement of defence has been amended three times. This would be the fourth time. I do find the application for amendment made very late in a suit that was filed in 2013.
7. Moreover, the application intends to amend the defence to include points of law on limitation of time to the effect that the plaintiffs case for breach of agreement and recovery of land are time barred respectively under section 4(1) (a) and 7 of the *Limitation of Actions Act*. I do find these to be major shift from the issues in the case. The defendant intends to bring in an issue of jurisdiction and yet the parties have closed their cases. It introduces a new issue that will require the matter to be re-heard. Allowing the application will be unfair and prejudicial to the plaintiff. The application is dismissed with costs. Judgment on 29th February 2024 at 2.30 p.m.

RULING DATED AND SIGNED THIS 9TH DAY OF FEBRUARY 2024.

A O OMBWAYO

JUDGE

