



**Ten Out of Ten Limited & 10 others v Local Authorities Pension Trust
(Civil Suit 274 of 2018) [2024] KEELC 5205 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5205 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CIVIL SUIT 274 OF 2018**

J OMANGE, J

JULY 9, 2024

BETWEEN

- TEN OUT OF TEN LIMITED 1ST PLAINTIFF**
- LIMITLESS TECHNOLOGIES LIMITED 2ND PLAINTIFF**
- RUBY FOODS AND BEVERAGES LIMITED 3RD PLAINTIFF**
- DAM VIEW ENTERPRISES LIMITED 4TH PLAINTIFF**
- CAROGA PHARMA (KENYA) LIMITED 5TH PLAINTIFF**
- INDUSTRIAL AND RETAIL SCALES CO. LIMITED 6TH PLAINTIFF**
- ISAAC MATHAGA AND LUCY WANJIKU MATHAGA T/A MAWAR
CAFETERIA 7TH PLAINTIFF**
- FREDRICK NYAGA MBOGO AND LINDA NYAGA T/A BELINDA
ENTERPRISES 8TH PLAINTIFF**
- PAUL KAMAU KATHENJU & ALICE NJERI KAMAU T/A ALIPAUL
ENTERPRISES 9TH PLAINTIFF**
- PAUL KAMAU KATHENJU & ALICE NJERI KAMAU T/A ALIBRA
ENTERPRISES 10TH PLAINTIFF**
- MARIA NDUKU MULEI T/A NDEMI ENTERPRISES 11TH PLAINTIFF**

AND

LOCAL AUTHORITIES PENSION TRUST DEFENDANT



RULING

1. This matter is coming up for determination of the Preliminary Objection dated 30th October, 2023 and the Plaintiffs application dated 8th May, 2024 in which the Plaintiff prayed for the following orders;
 - i. That leave to amend the then amended plaint dated 4th December, 2015 was granted on 25th March, 2021 and the Plaintiffs were vide the said ruling supposed to further amend and serve the further amended plaint within seven (7) days from the said date. However, the further amended plaint was filed outside the seven (7) days and served on 25th October 2022 long after the mandated seven (7) days and the same is therefore improperly and un-procedurally in the court records and ought to be struck off.
 - ii. That the Application seeks an order that the Honourable Court be pleased to certify this Application as urgent and that it be heard Ex Parte in the first instance.
 - iii. That the Plaintiffs/Applicants seeks, inter alia, an order of the Honourable Court that the Application filed herewith be heard and determined together with the Preliminary Objection dated 30th October, 2023 and for enlargement of time for filing and serving of the Amended Plaint dated 22nd September, 2022 and the Honourable Court be pleased to grant such order and/or directions that meet the interests and ends of justice in the circumstances.
 - iv. That the Plaintiffs/Applicants were granted leave to and their Plaint on 25th March 2021 and the Amended Plaint and List of Documents was filed on 22nd September, 2022 and the Advocates for the Defendant's/Respondent were served on 24th October, 2022.
 - v. That subsequently the Suit was filed for Pretrial Mentions on 16th and 28th November 2023 and the Suit was scheduled for hearing on 22nd April, 2024.
 - vi. That the Defendant's Respondent filed a Notice of Preliminary Objection dated 30th October, 2023 which was served on 22nd April, 2024 on the morning of the scheduled Hearing date.
 - vii. That the Suit initially involved 18 Plaintiffs/Applicants, who had to individually supply documents to compute their claims, and hence the delay in filing and serving the Amended Plaint within the timelines initially envisaged.
 - viii. That the delay in filing and serving the Amended Plaint was inadvertent, a result of the nature of suit, factors beyond the control of the Plaintiffs/Applicants and their advocates, exigencies of the time and the circumstances of each Plaintiff.
 - ix. That the Defendant's/Respondent did not raise any Objection after service of the Amended Plaint for a period of over one year and hence the Preliminary Objection served on 22nd April 2024 is an afterthought and intended to prejudice the Plaintiff/Applicants.
 - x. That the Suit relates to unlawful eviction of the Plaintiffs/Applicants which resulted in destruction of their livelihoods and hence it is an emotive matter that should be heard and determined in its substantive merits without undue regard to technicalities.
 - xi. That since being served with the amended Plaint over 2 years ago, the Defendant's/Respondent has failed, refused and/or neglected to file its Amended Statement of Defence or any Witness Statements or Documents, with the intention of obstructing the expedited hearing and determination of the Suit on its merits.



- xii. That the extension of the time for filing the Amended Plaintiff will not result in any prejudice to the Defendant's/Respondent.
- xiii. That it is in the interest of justice that this Application be allowed.
2. The gist of the Preliminary Objection by the Defendant's is that leave was granted to the Plaintiffs to file a further amended plaintiff within 7 days of a Ruling dated 25th March, 2021.
- That the Plaintiffs did not file the further amended plaintiff until the 22nd September, 2022 more than a year later. The Defendant's submitted that the Plaintiff which was filed outside time should be struck out.
3. The application by the Plaintiffs essentially seeks to address the issues raised in the preliminary objection. The Plaintiffs/ Applicants through the affidavit sworn by Boniface Mwangi Kamau depone that there was delay in amending the plaintiff due to the number of Plaintiffs who had to be contacted individually before the Further Amended Plaintiff could be filed. The Plaintiffs point out that the Defendant's had never raised the issue of the further amended plaintiff which was filed out of time.
4. It is not in dispute that the amended plaintiff was filed late without leave. The only issue is whether the court should allow extension of time and consider the further amended plaintiff as having been duly filed within time or whether the court should strike out the plaintiff as urged by the Defendant's.
5. The courts have had occasion to address the principles that ought to guide a court in extension of time. In the case of *Edith Gichungu Koine v Stephen Njagi Thoithi* [2014] eKLR Odek JJA stated:
- “Nevertheless, it ought to be guided by consideration of factors stated in many previous decisions of this court including, but not limited to, the period of delay, the reasons for the delay, the degree of prejudice to Respondent if the application is granted, and whether the matter raises issues of public importance, amongst others.”
6. In this case the period of delay is over one year. Even more disturbing is that with full knowledge that the Plaintiff was filed out of time the Plaintiffs were ready to proceed without regularizing the position.
7. The reasons for the delay as explained by the Plaintiffs is that given the number of Plaintiffs it was difficult for Counsel to reach them all especially given that this was during the COVID period. I find that the reasons given are plausible hence I will exercise the discretion granted to the court to extend time as provided by Order 50 Rule 6.
8. Given the lapses and delay by the Plaintiffs in making this application which have resulted in delay of a very old matter the Plaintiffs will meet the costs of this application assessed at Kshs 5,000.
9. The application is allowed in the following terms;
- a. The Plaintiffs do file and serve the further amended plaintiff within 30 days from today.
- b. That the Defendant is granted leave to file amended Defence within 30 days of service of the further amended plaintiff.
- c. The Plaintiffs are to pay the costs for this application assessed at Kshs. 5,000.

RULING, DATED, SIGNED AND DELIVERED ON 9TH DAY OF JULY, 2024 VIA MICROSOFT TEAMS.

JUDY OMANGE

JUDGE



In the Presence of: -

-Ms. Maina for Mr. Nderitu for the Plaintiffs

-No Appearance for the Defendant

-Court Assistant: Steve Musyoki

