



**Kenya Railways Staff Benefits Scheme v Anglo-African Property Holdings Limited & 2 others
(Environment & Land Case E100 of 2021) [2024] KEELC 6605 (KLR) (3 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6605 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E100 OF 2021
LN MBUGUA, J
OCTOBER 3, 2024**

BETWEEN

KENYA RAILWAYS STAFF BENEFITS SCHEME PLAINTIFF

AND

ANGLO-AFRICAN PROPERTY HOLDINGS LIMITED 1ST DEFENDANT

THE CHIEF LANDS REGISTRAR 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. Before me is the Plaintiff's Notice of Motion dated 29.4.2024 seeking leave to amend the plaint and that the draft amended plaint be deemed as duly filed. The application is premised on the grounds on its face and on the supporting affidavit of one James Kanyeki Kariuki, the Chief Executive Officer of the plaintiff. The plaintiffs aver that as per the legal notice no.169 of 2006, the Kenya Railways Staff Retirement Benefits Scheme (the scheme) transferred their property parcel no. 209/12178 to the Trustees of Kenya Railways Staff Retirement Benefits scheme (trustees). Thus the plaintiffs need to amend the plaint to cure the issue of locus.
2. In opposition, the 1st defendants filed Grounds of Opposition dated 6.6.2024 and a replying affidavit sworn by the company secretary one Samson Macharia Munene on 13.6.2024. They contend that the application is one of substitution and not amendment and that if it is allowed, their defence will be defeated and they stand to be prejudiced.
3. The attorney General did not file any response to the application.



4. The question for determination is whether the proposed amendments should be allowed or not. The provisions of Order 8, Rule 3 (1) [Civil Procedure Rules, 2010](#) stipulates that:

“Subject to Order 1, rules 9 and 10, Order 24, rules 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”.

5. Further, Order 8 Rule 5 (1) of the [Civil Procedure Rules, 2010](#) provides that:

“For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just”.

6. The Court of Appeal for East Africa in the locus classicus case of *Eastern Bakery v Castelino* [1958] EA 461 held that amendments sought before the hearing should be freely allowed if they can be made without injustice to the other side.

7. The alleged legal notice which vested the suit properties to the trustees was apparently given in year 2006, long before this suit was filed. But again, the real issues in controversy shall not be properly adjudicated upon if the amendments are not allowed since the trustees are apparently the ones with the mandate to sue. In that regard, I find that the application dated 29.4.2024 is merited. The same is allowed but with costs to the 1st defendant. The defendants are at liberty to amend their defence accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Wanda holding brief for Juma for Plaintiff

Kimani holding brief for Kirago for Defendant

Kimani for 1st Defendant

Court assistant: Joan

