



**Chuchu & 5 others v Karoki (Environment and Land Case Civil Suit
121 of 2018) [2023] KEELC 20934 (KLR) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20934 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE CIVIL SUIT 121 OF 2018**

BM EBOSO, J

OCTOBER 12, 2023

BETWEEN

**SIMON CHUCHU 1ST PLAINTIFF
GEORGE KINYANJUI MUCHAI 2ND PLAINTIFF
ANTONY NGANGA MBUGUA 3RD PLAINTIFF
JOSEPH MBUGUA 4TH PLAINTIFF
GRACE WAMBUI MUROKI 5TH PLAINTIFF
DORCAS KANYI WAIRIMU 6TH PLAINTIFF**

AND

NAOMI WANJIKU KAROKI DEFENDANT

RULING

1. What falls for determination in this ruling is the plaintiffs' notice of motion dated 18/4/2023, through which the plaintiffs seek leave to amend their plaint dated 16/4/2018 to join Eliud Ndungu Mwangi, Susan Wanjiru Gitau, Stanbic Bank (Kenya) Limited and the Ruiru Land Registrar as the 2nd, 3rd, 4th and 5th defendants respectively. They also seek an order that the amended plaint annexed to the application dated 18/4/2023 be deemed as duly filed upon payment of the requisite court fees. The application is supported by the affidavit of Simon Chuchu, sworn on 18/4/2023.
2. The applicants' case is that at the time of filing the suit, the green card relating to the suit property bore the defendant as the owner of the suit property. The plaintiffs add that at that point in time, the 1st defendant had placed a restriction on the suit property. They add that they have subsequently learnt that the defendant transferred the suit property to Eliud Ndungu Mwangi and Susan Wanjiru Gitau during the pendency of this suit. The said Eliud Ndungu Mwangi and Susan Wanjiru Gitau subsequently used the suit property to secure a bank loan from Stanbic Bank (Kenya) Limited. The



plaintiffs contend that it is necessary for the court to grant them leave to amend their plaint to join the proposed defendants as parties to the suit.

3. The defendant/respondent opposes the application through her replying affidavit sworn on 14/8/2023. Her case is that there is no plea for joinder of the proposed 2nd to 5th defendants, adding that the court cannot grant orders of joinder without a specific prayer inviting the court to do so. She contends that a plea to amend a plaint as a stand-alone prayer is futile without a plea for joinder. The defendant/respondent further contends that the applicants have been indolent in bringing the present application given that there was full disclosure of transfer of the suit property in the defence dated 26/10/2020. The defendant/respondent argues that the delay by the plaintiffs is inordinate and that no reasonable explanation has been given for the delay. The application was canvassed through oral submissions in the virtual court.
4. I have considered the application, the response to the application, and the parties' respective oral submissions. I have also considered the relevant legal frameworks and jurisprudence. The question that falls for determination in the application is whether the application meets the criteria upon which this court exercises jurisdiction to grant an order for leave to amend pleadings. I will be brief in my analysis and determination.
5. The law on amendment of pleadings is well settled. Order 8 rule 3 of the [Civil Procedure Rules](#) 2010 provides for amendment of pleadings with leave of the court as follows:
 - “(1) 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.”
6. Order 1 rule 10(2) of the [Civil Procedure Rules](#) provides that:
 - “The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
7. The Court of Appeal outlined the relevant guiding principle on amendment of pleadings in the case of *Central Kenya Ltd v Trust Bank Ltd & 5 others* [2000] eKLR as follows:
 - “The policy of the law is that amendments to pleadings are to be freely allowed unless by allowing them the opposite side would be prejudiced or suffer injustice which cannot properly be compensated for in costs.”
8. The key ground upon which the respondent oppose the application is that the applicant did not make a specific prayer for joinder. I have reflected on this argument. It is clear from the exhibited draft amended plaint, which encompasses all the intended amendments, that the proposed amendments entail joinder of additional defendants. Failure to specifically pray for an order of joinder is not fatal in the circumstances.
9. Although hearing in this suit has commenced, it is the view of the court that any inconvenience suffered by the existing defendant can be properly indemnified through an award of costs. The amendments



sought by the plaintiffs seek to join four defendants who are necessary for the effectual and complete adjudication and settlement of all questions that arise in the suit. In the circumstances, I will grant the plaintiff leave to amend their pleadings.

10. The result is that the notice of motion dated 18/4/2023 is allowed in terms of prayer (a). The plaintiffs shall file an amended plaint in terms of the draft amended plaint within 14 days. They shall serve the amended plaint within the said period. The defendants will be at liberty to file amended pleadings within 21 days upon service of the amended plaint. The plaintiffs shall pay Naomi Wanjiru Karoki's Advocates throw-away costs of Kshs 25,000.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 12TH DAY OF OCTOBER 2023

B M EBOSO

JUDGE

In the presence of: -

Mrs Mangwa for the Defendant/Respondent

Court Assistant: Osodo/Hinga

