



**Muraguri v Muiruri (Environment & Land Case 348 of 2009 & 285 & 295 of 2011
(Consolidated)) [2023] KEELC 21302 (KLR) (2 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21302 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 348 OF 2009 & 285 & 295 OF 2011 (CONSOLIDATED)
EK WABWOTO, J
NOVEMBER 2, 2023**

BETWEEN

PETER GITHUKU MURAGURI PLAINTIFF

AND

WAWERU MUIRURI DEFENDANT

RULING

1. Before me for determination is an application dated September 22, 2023 accompanied by supporting affidavit sworn by Peter Githuku Muraguri. The applicant seeks the following orders:
 - i. That the plaintiff be granted leave to further amend his Plaintiff.
 - ii. That the defendants be at liberty to amend their defence seven days after filing and service of the further amended plaintiff.
 - iii. That the plaintiff be granted leave to file a further bundle of documents and witness statement if need be.
 - iv. That necessary directions be made.
 - v. That costs of this application be in the cause;
2. On September 25, 2023, the matter was set down for hearing on November 30, 2023 and directions given with respect to the dispensation of the aforementioned application. During the hearing of the application learned counsel Amuyunzu for the plaintiff submitted that there was a need to amend the Plaintiff for the reasons set out in the supporting affidavit of the application. It was also posited that a further amendment would avoid multiplicity of suits and conclusive determination of the suits.
3. The application was opposed by the defendants. Learned counsel Mr. Mwangi argued that all matters could be ventilated during the hearing of the suit. He reiterated that contrary to the plaintiff's



averments, the application was opposed in the replying affidavit (erroneously titled supporting affidavit) sworn by Stephen Njenga Ngugi on October 23, 2023. It was also submitted that the plaintiff's concerns were dealt by a ruling delivered by Muchelule J. (as he then was) in the initial stages of the suit. It was also argued that the amendment was a scheme to deliberately delay the hearing and determination of the suit.

4. The court having considered the application perused is of the view that the main issue for determination is whether this court should grant the applicant leave to amend the plaint.
5. Order 8 rule 3 of the [Civil Procedure Rules](#) provides for amendment of pleadings with leave of 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. Further, order 8, rule 5 of the [Civil Procedure Rules](#) gives the court the general power to amend.

“5.

(1) 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”.

7. The Court of Appeal reiterated the principles governing amendment of pleadings in [Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited](#) [2013] eKLR as follows: -

“...The powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); 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; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that 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 [Limitation Acts](#).

8. In [Institute For Social Accountability & another v Parliament of Kenya & 3 others](#) [2014] eKLR the court held:-

“...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....The court will normally allow parties to make such amendments as may be necessary for determining the real questions in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, no new or inconsistent cause of action is



introduced, and no vested interest or accrued legal right is affected and that the amendment can be allowed without an injustice to the other side.”

9. The decision of *Daniel Ngetich and Another v K-Rep Bank Limited* 2013 KLR makes very useful holdings to the effect that:-

“Normally the court should be liberal in granting leave to amend pleadings. But it must never grant leave if the court is of the opinion that the amendment would cause injustice or irreparable loss to the other side or if it is a devise to abuse the process of court” Amendment ought to be allowed when:

- (a) They do not work injustice to the other side.
- (b) They are necessary for the purposes of determining the real questions in controversy between the parties”.

10. In exercising its discretionary powers this court has foremost considered the age of the matter vis a vis the parties’ right to a timeous hearing free from prejudice of any kind. The Court must also consider whether the application has been brought in a timeous manner and in good faith. Firstly, this application was brought before commencement of hearing and does not introduce a new cause of action. With regards to good faith, the application seeks leave not just for the Plaintiff but also the Defendants in respect to the amendment of their respective pleadings. In the foregoing, the court finds that the application dated September 22, 2023 is merited and will proceed to allow the same in the following terms:

- i. The plaintiff is granted leave to file and serve its further amended plaint within 5 days of delivery of this ruling;
- ii. The plaintiff is granted leave to file and serve a further bundle of documents and witness statement if need be, within 5 days of delivery of this ruling;
- iii. The defendants are at liberty to amend, file and serve their defence and bundle of documents within 7 days of service of the further amended plaint and plaintiff’s bundle of documents;
- iv. Any documents filed out of the time prescribed in this ruling will be struck out;
- v. Hearing of the suit will proceed as earlier set on November 30, 2023
- vi. Costs of this application be in the cause

11. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF NOVEMBER 2023.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Amuyunzu for the Plaintiff/Applicant.

Mr. D.K. Mwangi for the 1st – 7th Defendants

