



**Pandhaal v Verjee (Environment & Land Case 180 of 2019)  
[2022] KEELC 79 (KLR) (5 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 79 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 180 OF 2019**

**M SILA, J**

**MAY 5, 2022**

**BETWEEN**

**JAGJIT SINGH GURUMUKH PANDHAAL ..... PLAINTIFF**

**AND**

**HUSSEIN MOHAMED GULAMHUSSEIN VERJEE ..... DEFENDANT**

**RULING**

1. The application before me is that dated 1 December 2020 filed by the defendant. The defendant seeks leave to amend the defence and there is a draft amended defence annexed to the application. The plaintiff opposes the application.
2. To put matters into perspective, this suit was commenced by way of a plaint filed on 11 October 2019. In the plaint, the plaintiff pleaded that he was the owner of two parcels of land which he allowed the defendant to sell on his behalf. The plaintiff pleaded that the defendant sold one property for Kshs. 10,000,000/= and the second property for Kshs. 9,500,000/=. He pleaded that despite receiving the proceeds of sale, the defendant has failed to remit the same to him. In the plaint, the plaintiff has sought the sum of Kshs. 19,500,000/= and interest.
3. The defendant filed defence where he admitted selling the two properties of the plaintiff but contended that any monies owing to the plaintiff were paid in full. It is this defence that the defendant wishes to amend. In the supporting affidavit, the defendant avers that there are mistakes in the defence made by his advocate while drafting. He avers that he only transacted once with the plaintiff and wishes to put the proper defence on record. I have looked at the draft amended defence and it is apparent that the defendant wishes to amend the defence so as to plead that he only sold one of the plaintiff's properties and not two.
4. The plaintiff has filed a replying affidavit to oppose the motion. He has deposed inter alia that this application has been filed one year after close of pleadings. He asserts that the delay in filing the



application is inordinate, inexcusable, unjustified, lethargic and unreasonable. He thus wants the application to be disallowed.

5. I directed counsel to file submissions which they did. I have taken note of these submissions.
6. This is an application to amend defence after close of pleadings. Order 8 Rule 3 thus applies. It states as follows :-

Amendment of pleading with leave [Order 8, rule 3.]

- (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.
  - (2) Where an application to the court for leave to make an amendment such as is mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such subrule if it thinks just so to do.
  - (3) An amendment to correct the name of a party may be allowed under subrule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.
  - (4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under subrule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued.
  - (5) An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.
7. It will be seen from the above that under Order 8 Rule 3 (1) the court may at any stage of the proceedings allow a party to amend his pleadings. The court therefore has wide discretion and indeed it is the practice of the courts to allow a party to amend unless there will be prejudice caused to the other party. This was succinctly put by O'Connor J, in the case of *Eastern Bakery vs Castelino* (1958) EA 461, where the judge stated as follows at p462 :-

“It will be sufficient for purposes of the present case, to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs: *Tildesley v. Harper* (10 (1878), 10 Ch. D. 393; *Clarapede v. Commercial Union Association* (2) (1883), 32 W.R. 262. The court will not refuse to allow an amendment simply because it introduces a new case: *Budding v. Murdoch* (3) (1875), 1 Ch. D. 42. But there is no power to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject matter of the suit: *Ma Shwe Mya vs. Maung Po Hnaung* (4) (1921), 48 I.A. 214; 48 Cal. 832. The court will refuse leave to amend where the amendment would change the action into one of a substantially different character: *Raleigh v. Goschen* (5), [1898] 1 Ch. 73, 81; or where the amendment would prejudice the rights of the opposite party existing at the date of the proposed amendments, e.g. by depriving him of a defence of limitation accrued since the issue of the writ: *Weldon v. Neal* (6) (1887), 19 Q.B.D.



394; Hilton v. Sutton Steam Laundry (7), [1946] K.B. 65. The main principle is that an amendment should not be allowed if it causes injustice to the other side”.

8. I am in full agreement with the above dictum. Amendments should be allowed unless there is prejudice that is going to be caused to the other party. In as much as the plaintiff asserts that the amendments are being made very late in the day, I do not see the point in this argument. This suit has not even started and I see no prejudice to the plaintiff. He will have a chance to test the defence being raised by the defendant at the hearing of the suit. I therefore allow this application. The defendant is hereby granted leave to amend the defence within 14 days from the date hereof.
9. The only issue left is costs. The defendant had an opportunity to plead the proper defence in the first instance. He will therefore shoulder the costs of this application.
10. Orders accordingly.

**DATED AND DELIVERED THIS 5 DAY OF MAY 2022**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

