



**Hasgeman Company Limited & 2 others v Patel & 5 others (Environment & Land Case 131 of 2015 & 2011 of 2016 (Consolidated)) [2025] KEELC 4040 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4040 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 131 OF 2015 & 2011 OF 2016 (CONSOLIDATED)  
JA MOGENI & AM COCKAR, JJ  
MAY 20, 2025**

**BETWEEN**

**HASGEMAN COMPANY LIMITED ..... PLAINTIFF**

**AND**

**MAHENDRA G PATEL ..... 1<sup>ST</sup> DEFENDANT**

**REGISTRAR OF TITLES ..... 2<sup>ND</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT**

**AS CONSOLIDATED WITH**

**ENVIRONMENT & LAND CASE 2011 OF 2016**

**BETWEEN**

**MARIAM AHMED ..... 1<sup>ST</sup> PLAINTIFF**

**RAJAB AHMED KARUME (SUING AS ADMINISTRATORS OF THE ESTATE OF AZIZ AHMED KARUME - DECEASED) ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**HASGEMAN COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ALPHA GRAIN MILLERS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**FIRST COMMUNITY BANK LIMITED ..... 3<sup>RD</sup> DEFENDANT**



## RULING

1. Coming up for determination is an Application filed by the 1<sup>st</sup> Defendant dated 15/05/2024 wherein he seeks orders that he be granted leave to amend his Defence and Counter-claim following this Court's decision on 23/11/2023 to set aside the proceedings of the Court and the Judgment dated 27/02/2023. That the amended draft and Counter-claim be deemed as duly filed and served after payment of the requisite fees.
2. The Application is premised on grounds that the Court set aside the proceedings and Judgment dated 27/02/2023 and consequently the consolidated matters will be heard afresh. Therefore it is only proper that the 1<sup>st</sup> Defendant amends its pleadings for the interest of justice and proper determination of the issues in the dispute.
3. It is the position of the 1<sup>st</sup> Defendant that the amendments will aid the Court to determine the real questions in controversy between the parties. Further that it is the rule of this Court to allow for amendments such as the one prayed for so injustice is not occasioned on a party.
4. The 1<sup>st</sup> Defendant deposes that a party is bound by its pleadings and it is imperative that he is allowed to amend his pleadings. That there will be no injustice or prejudice to be occasioned to the Plaintiffs and other Defendants if the Application is allowed since it is all in the interest of justice.
5. The Application is supported by an Affidavit sworn by the 1<sup>st</sup> Defendant wherein he deposes that since a party is bound by its pleadings that the Court may grant the prayer for amendment sought for the Defence and Counterclaim to enable the Court determine the real question in controversy between the parties.
6. He also deposes that the rules of the Court allow for amendment like the one he is seeking and that no prejudice shall be occasioned to the Plaintiffs and the Defendants if the Application is allowed.
7. Further that the Application has been filed without undue delay.
8. In a Replying Affidavit sworn by the Administrator of the Estate of the Plaintiff, Rajab Ahmed Karume on 13/06/2024 she deposed that the Judgment delivered on 27/02/2023 declared Aziz Ahmed Karume (deceased) the rightful owner of LR 20750 and that the 1<sup>st</sup> Defendant's Counter-Claim was dismissed.
9. The Plaintiff avers that the setting aside of the proceedings and the Judgment delivered on 27/02/2023 was meant to be for the benefit of the 2<sup>nd</sup> Defendant who had not been served with summons of to enter appearance and not the 1<sup>st</sup> Defendant
10. It is the Plaintiff's averment that the 1<sup>st</sup> Defendant participated in the suit to the conclusion and even at issuance of Judgment and therefore allowing them to amend the Defence and introduce a Counter-claim is tantamount to introducing a new issue. Also this is an abuse of the Court process because it is like having a second bite of the cherry. The Application is thus made in bad faith.
11. The Plaintiff has deposed that the amendment by the 1<sup>st</sup> Defendant seeks to introduce new and inconsistent evidence that alter and depart from the Defendant's original pleadings and this is highly prejudicial to the Plaintiff's cause in ELC No. 1201 of 2016.
12. Further that following the consolidation of the suits on 22/06/2017 each party was to defend their claim to the suit property on the basis of the pleadings filed. Yet since the 1<sup>st</sup> Defendant in ELC No. 131 of 2015 is not a party in ELC No. 1201 of 2016, then they cannot purport to amend their pleadings



to respond. For the Plaintiff, they contend that, that is the reason why the Court took the evidence during the hearing of the suit.

13. The Plaintiff further avers that the 1<sup>st</sup> Defendant's contention that the Plaintiff has no capacity is unfounded because the 1<sup>st</sup> Plaintiff and the administrator instituted this suit in their capacity as administrators of the Estate of Aziz Ahmed Karume (Deceased) pursuant to a Limited Grant of Letters made on 20/04/2016. The Certificate of Confirmation of Grant was issued to the 1<sup>st</sup> Plaintiff on 21/03/2018 where the suit property was wholly distributed to Kareem Construction Engineering Limited where the Plaintiff is a Director and Shareholder and that she has capacity to continue with the suit.
14. The Plaintiff thus prays that the Application be dismissed with costs.
15. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not participate in the Application.
16. The Application was canvassed by way of written submissions. Counsel for the 1<sup>st</sup> Defendant filed their submissions dated 17/07/2024 and the Plaintiff filed their submissions dated 2/08/2024 which I have read and considered in my Ruling.
17. In summary the 1<sup>st</sup> Defendant submitted it is necessary to amend the Defence for the proper determination of the dispute since the matter involves land and that there are two titles to the suit property. Further that it is important for the Court to use its wide discretion to allow the amendments so that in the end the Court will arrive at a fair and just decision after engaging in a fair trial. Counsel cited authorities that restate the principle that amendment of pleadings ought to be freely allowed by the Courts if it can be done without injustice and that there is no injustice where the other party can be compensated by costs.
18. On the part of the Plaintiff it was submitted that the amendment being sought is not deserved and the Court needs to consider the injustice that may be visited on the Plaintiff that may not be compensated by way of costs. Further that the Application for amendment was not timeously done since it came at the end of a hearing where Judgment was delivered and now the 1<sup>st</sup> Defendant wants to have second bite at the cherry which is gravely prejudicial to the Plaintiff since the 1<sup>st</sup> Defendant seeks to fill gaps.
19. The Plaintiff implores the Court to decline to exercise its discretion.
20. Having considered the pleadings and the written submissions the Court finds that the 1<sup>st</sup> Defendant seeks leave of this Court to amend his Defence and Counterclaim. It is his submission that such amendment ought to be allowed to enable the Court adjudicate over all the issues in dispute thereby determine the rights of each party. The Plaintiff avers that the Application is a mere tactic to enable him have a second bite of the cherry and fill the gaps in his case which was well articulated and he participated in the hearing and Judgment issued. That the action of setting aside the proceedings and Judgement was for the benefit of the 2<sup>nd</sup> Defendant and not for the 1<sup>st</sup> Defendant to reopen their case.
21. The discretion of the Court to allow amendment of pleadings flows from Order 8 Rule 3 which permits this Court at any stage of the proceedings on such terms as to costs or otherwise as may be just to allow any party to amend his pleadings. Courts have termed this discretion as wide and unfettered save that the same has to be exercised judicially upon some guiding principles. These principles were set out in *Central Kenya Ltd –vs- Trust Bank Ltd Appeal No. 222 of 1998 (2000) 2 EA page 365*.
  - i. that a party is allowed to make such amendments as maybe necessary for determining the real question in controversy.
  - ii. to avoid a multiplicity of suits, provided there has been no undue delay,



- iii. that no new or inconsistent cause of action is introduced,
  - iv. that no vested interest or accrued legal right is affected; and
  - v. that the amendment can be allowed without injustice to the other side.
22. The Court of Appeal in *Ochieng & Ors v First National Bank of Chicago, Civil Appeal No.149 of 1991* observed that,
- “The power of the Court to allow amendments is intended to determine the true, substantive merits of the case; that amendments should be timeously applied for: that power to amend can be exercised by the Court at any stage of the proceedings; and 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” (Emphasis Added).
23. It follows therefore that the basis for allowing amendments is to enable the Court determine the true and substantive merits of the case. Therefore that even where there is delay in bringing the Application, such amendment can still be allowed. I have perused the amended Defence and Counter-claim annexed to the 1<sup>st</sup> Defendant’s Application and do find that it will serve the purpose of assisting the Court in determining the real question in controversy between the parties. I also do not see any prejudice to be suffered by the Plaintiff that cannot be compensated by an award of costs.
24. The Orders of the Court are as follows:-
1. The 1<sup>st</sup> Defendant is hereby granted leave to amend its Defence and Counter-claim in terms of the draft annexed to the Application dated 15/05/2024, and file the same within 7 days of the date hereof after payment of the requisite fees.
  2. The Defence and Counter-claim together with Bundle of Documents and Witness Statements to be relied upon by the 1<sup>st</sup> Defendant be served within 14 days of the date of filing.
  3. The Plaintiff and 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are granted leave to file a Reply to the Amended Defence and Counter-claim within 14 days of receipt of service.
  4. The 1<sup>st</sup> Defendant shall meet the costs of this Application and the Defence and Counter Claim.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 20<sup>TH</sup> DAY OF MAY 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J**

**JUDGE**

In the presence of:

Ms. Wanja Wanjuki holding brief for Mrs. Maina for the Plaintiff

Ms. Gitau holding brief for Ms. Wadabwa for the 1<sup>st</sup> Defendant

Ms. Amwama holding brief for Mr. Mugunga for the 2<sup>nd</sup> Defendant

Ms. Masinde for the 3<sup>rd</sup> Defendant

Mr. Melita – Court Assistant



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**MOGENI J  
JUDGE**

