



**Adan & another v Commissioner-General Kenya Revenue Authority & another
(Civil Suit E004 of 2021) [2024] KEHC 1290 (KLR) (16 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1290 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CIVIL SUIT E004 OF 2021
WM MUSYOKA, J
FEBRUARY 16, 2024**

BETWEEN

BULLE DIIS ADAN 1ST PLAINTIFF

MAQBULL INDUSTRIES COMPANY LIMITED 2ND PLAINTIFF

AND

**THE COMMISSIONER-GENERAL KENYA REVENUE AUTHORITY 1ST
DEFENDANT**

THE ATTORNEY-GENERAL 2ND DEFENDANT

RULING

1. I am called upon to determine a Motion, dated 26th October 2023. It seeks orders related to amendment of pleadings, and the calling of an expert witness. It is averred that the amendment was necessitated by a discovery made after certain documents were served on the plaintiffs on 17th October 2023, when the matter was coming up for hearing. A copy of the plaint is attached, exhibiting the proposed amendments.
2. The response is by an officer of the 1st defendant. He substantially acknowledges that there is liberty by a party to amend its pleadings at any time. However, he urges the court to note that there has been delay in the disposal of the matter, occasioned by a number of things done by the plaintiffs. One, he says that they sought time to have their plaint amended, and the amendments sought now are the second. Two, whenever the matter comes up for hearing, the plaintiffs always adjourn the matter. He also argues that the amendments sought substantially change the character of the suit, and are in abuse of court process.
3. The plaintiffs filed a rejoinder, essentially saying that the amendments were necessitated by documents that the defendants placed on record at the last minute, on the date when the matter was coming up for hearing.



4. The application was canvassed by way of written submissions. Both sides filed submissions, supported by authorities.
5. Applications to amend pleadings are usually allowed by the court as a matter of course. That is so as there is general discretion given to the courts, to allow amendments, in the interests of justice, and to facilitate a comprehensive determination of the dispute before the court. There are few exceptions, where the court may deny an application for amendment. The first is where hardship is likely to be caused to the other party, which cannot be remedied by way of costs. The second is where the amendment sought introduces a totally new cause of action, which is alien to the existing cause, and in respect of which a separate suit ought to be filed. The other would be where the proposed amendment is being made too late in the day.
6. So, the plaintiffs are within their rights to seek to make the amendments in question. This matter is yet to go to trial, and, therefore, it would not be too late to amend pleadings. Looking at the proposed changes, it would appear that the material being introduced is not alien to the existing cause. It only introduces one new prayer, for compensation, with respect to legal and filing fees. The other changes affect existing prayers, and relate to quantification. In my view, the introduced material aligns with what is already pleaded in the plaint. The defendants have not alleged that they would be exposed to hardship, which may require to be remedied by way of costs.
7. The plaintiffs pray for leave to call an expert witness. Parties are at liberty to call such witnesses as are necessary to prove the allegations made in their pleadings. I do not think there would be need for leave to call a witness. The only assistance a party may require from court, with respect to calling witnesses, would be issuance of witness summonses where need arises.
8. I shall, accordingly, allow the application, dated 26th October 2023, as prayed in prayers 1, 2 and 3. Costs shall abide the outcome of the suit. Let the requisite court fees, with respect to the re-amended plaint, be paid within 30 days. The matter shall be mentioned, for compliance and allocation of a hearing date, on 23rd April, 2024. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 16TH DAY OF FEBRUARY 2024

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates:

Mr. Ashioya, instructed by Ashioya & Company, Advocates for the plaintiffs.

Mr. Leparan Lemiso, Advocate for the defendants.

