



Women Enterprises Fund v Pamoja WP, EM Development Programme (Civil Case 10 of 2019) [2024] KEHC 9614 (KLR) (17 May 2024) (Directions)

Neutral citation: [2024] KEHC 9614 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE 10 OF 2019
DO CHEPKWONY, J
MAY 17, 2024**

BETWEEN

WOMEN ENTERPRISES FUND APPELLANT

AND

PAMOJA WP, EM DEVELOPMENT PROGRAMME RESPONDENT

DIRECTIONS

1. This suit was initially instituted at the Environment and Land Court in Thika, then transferred to this court on May 11, 2023. The parties, represented by their counsels, made their first court appearance before me on November 20, 2023. At that time, Mr. Kurauka, the Plaintiff's counsel, requested for leave to Amend the Plaintiff and to include an interested party in the case. He contended that the suit property was once owned by the Plaintiff before the Defendants sold it to another party during the ongoing litigation. He emphasized the importance of updating the court records to accurately reflect the status of the property and to involve the interested party, who stands to be impacted by the court's forthcoming decision. Mr. Kurauka argued that the court has considerable discretion to approve the amendment request and to add the third party so that all issues arising herein might be litigated at once.
2. In opposition, Mr. Muiruri, representing the first defendant, resisted the proposed amendments and the addition of a third party. He argued that the suit had abated, and that the Plaintiff should submit a formal motion to include the said third party.
3. In response, Mr. Kurauka disputed the notion that the suit had abated, maintaining that the suit has been continuously active.
4. This court will start by discussing whether the suit has abated. According to Order 24 Rule 1 of the [Civil Procedure Rules](#), 2010 a suit shall abate at the death of a Plaintiff or defendant unless the cause of action survives or continues against the legal representative of the deceased.



5. Mr. Muiruri for the 1st Defendant claimed that the suit had abated because some of the Defendant's directors had passed away and the Plaintiff did not collect and serve the summons as is required under the *Civil Procedure Rules*.
6. However, this court disagrees with the notion that the suit would abate due to the death of some directors, as this overlooks the fact that a company has a separate legal identity from its members. Therefore, a suit against the company does not cease due to a Director's death.
7. Regarding the abatement of the suit due to the failure to issue summons, Order 5 Rule 1 (6) states that if summons are issued but not collected for service within thirty days of issuance or notification, then the suit will abate. Furthermore, Order 5 Rule 1 (2) specifies that summons cannot be issued unless they are signed and sealed by the court. In this case there is no evidence that the summons were signed and sealed by this court or that the Plaintiff failed to collect such summons. Without this proof, it cannot be concluded that the suit has abated.
8. Concerning the Plaintiff's request to amend the Plaintiff, 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.
9. Further, Order 8, Rule 5(1) gives the court the general power to amend pleadings and it states:-
 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”.
10. In light of the rules mentioned, this court would like to note that before a court can allow a request for amendment, it has to first look into the intent and purpose of the amendment and whether any prejudice will be suffered by the other party or parties in dispute and whether the prejudice can be compensated by way of costs. The goal of any amendment should be to allow the parties to adjust their legal claims to reflect the actual facts they intend to rely on, rather than on incorrect assumptions.
11. Normally, courts should permit such amendments to address the real issues at hand or to prevent multiplicity of suits, as long as 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.
12. Applying these principles to the current case, it is clear that the Plaintiff initiated the suit while the suit property was still registered in his name, aiming to prevent the defendants from selling it. However, the property has since been sold to a third party, a fact not yet formally pleaded in the pleadings. Therefore, it is necessary to amend the legal claims to reflect the true situation. Since the trial is yet to commence, in this court's view, started, allowing the amendment will not in my view cause any harm or injustice to the Defendants, who will then have the opportunity to respond to the Amended Plaintiff.
13. Regarding the inclusion of the interested party in the amended pleadings, Order 1 Rule 10(2) of the *Civil Procedure Rules*, 2010 outlines how a court may decide to add a party to a case. Order 1 Rule 10(2) reads as follows: -

Rule 10 (2): 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.

14. This rule gives the court the discretion to order the name of a person who ought to be enjoined whether as Plaintiff or defendant, or whose presence before the court may be necessary, to enable the court effectually and completely adjudicate upon the matter and settle all questions involved in the said suits.
15. Rule 10(2) above expressly provides that the orders for joinder of parties can be made upon or without the application of either party hence this court disagrees with the 1st Defendant's counsel that the Plaintiff had to first make a formal application before seeking to enjoin the third party who purchased the suit property. Such orders may be made by the court on its own motion.
16. Be that as it may, so long as it can be demonstrated that a party has a legitimate interest in the subject matter, there is little reason to deny such a person joinder as an interested party. An interested party has repeatedly been said to be a party who has a stake in the proceedings and stands to be affected by the decision of the court when it is made, either way.
17. In this case, the party to be added as an interested party is the one who bought the property from the Defendants, thus having a stake in the property that justifies their inclusion in the suit. This court is thus convinced that the court's decision could impact on their rights over the property.
18. Therefore, based on the above discussion, the court issues the following orders:-
 - a. The Plaintiff is allowed to file an amended Plaint that includes all relevant parties within twenty-one (21) days from the date of this order.
 - b. That the Defendants shall file a defense response within fourteen (14) days of being served with the amended Plaint.
 - c. Mention on 27th June, 2024 to confirm compliance with pre-trial directions.

It is so ordered.

DIRECTIONS DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 17TH DAY OF MAY , 2024.

D.O CHEPKWONY

JUDGE

In the presence of:

M/s Njeri Ikubi holding brief for Mr. Maina Ngechu for the Appellant

Court Assistant - Martin

