



Mini Holdings Limited & another v Astonfield Management Limited & 3 others (Civil Suit E213 of 2022) [2024] KEHC 15673 (KLR) (Commercial and Tax) (6 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15673 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E213 OF 2022
FG MUGAMBI, J
DECEMBER 6, 2024**

BETWEEN

MINI HOLDINGS LIMITED 1ST PLAINTIFF

AMIN AKBERALI MANJI 2ND PLAINTIFF

AND

ASTONFIELD MANAGEMENT LIMITED 1ST DEFENDANT

ASTONFIELD RENEWABLE RESOURCES LTD 2ND DEFENDANT

ASTONFIELD SOLAR (AJMER) PRIVATE LTD 3RD DEFENDANT

AMEET SHAH 4TH DEFENDANT

RULING

Introduction And Background

1. By an application dated 15/5/2024 the plaintiffs seek leave to amend the plaint dated 2/6/2022 and the witness statement dated 22/12/2021 as well as leave to file a supplementary witness statement. The application is brought under Order 1 Rule 10 and Order 8 Rules 1, 3 and 5 of the *Civil Procedure Rules* and is supported by an affidavit sworn by Shiram Phadke, the 1st plaintiff's Finance Manager.
2. The plaintiffs contend that the ruling of 15/3/2024 arising from the 4th defendant's application of 7/10/2022 seeking to dismiss the suit, necessitated amendments to the plaint to clarify the real issues in dispute. They further contend that the proposed amendments will not prejudice the defendants and are in the interest of justice to ensure the efficient and fair determination of the matter.
3. The application is opposed. The 4th defendant filed a replying affidavit sworn on 6th June 2024 in opposition to the application. He contends that the proposed amendment is unnecessary for



determining the real question in controversy between the parties. He further argues that the application is brought in bad faith, intended to remedy an omission caused by the negligence or carelessness of the plaintiffs and their advocates, and is not the result of a genuine mistake.

4. The 4th defendant further avers that amending the plaint in the manner sought would deprive him of his legal right to rely on jurisdiction limitation and that the amendment sought was not filed timeously.
5. In rebuttal to the 4th defendant's replying affidavit, the plaintiffs filed a supplementary affidavit sworn on 30/8/2024 by the 1st plaintiff's finance manager. The plaintiffs maintain that that Harwood Limited is a necessary party to this suit as it entered into a primary agreement with the 1st defendant which was executed by the 4th defendant and thereafter the 1st plaintiff and the 2nd and 3rd defendant entered into an auxiliary secondary contract forming the subject matter of the suit herein.
6. The plaintiffs further assert that the need to amend the plaint has also arisen due to the defendants' filing of the Investment Option Agreement and the Share Transfer Agreement. These documents, which were not previously in the possession of the plaintiffs, substantiate the existence of both a primary and an auxiliary contract, thereby necessitating the proposed amendments.
7. The plaintiffs additionally contend that the inclusion of Amin Akberali as the 2nd plaintiff in the suit is not necessary. They argue that his participation is limited to his role as a signatory to certain documents to be produced in court, and his involvement can be addressed in his capacity as a witness. Consequently, the plaintiffs seek to have his name struck out from the suit and replaced with that of Harwood Limited.

Analysis and determination

8. The plaintiff and the 4th defendant filed written submissions dated 30/8/2024 and 7/10/2024, respectively. The court has considered these submissions alongside the pleadings, authorities and evidence filed by the parties. The core issue for determination is whether the court should allow the amendment of the plaint as proposed in the draft amended plaint annexed to the plaintiff's application.
9. The power to order the joinder or striking out of a party is provided under Order 1 Rule 10(2) of the *Civil Procedure Rules*, which states:

“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.” (emphasis mine).

10. Additionally, Order 8 Rule 3(1) of the *Civil Procedure Rules* provides the court with the discretion to allow amendments to pleadings. It states:

“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.”



11. The principles governing the exercise of this discretion were articulated in the case of *Eastern Bakery V Castelino*, (1958) E.A. 461, where Sir Kenneth O'Connor P. stated as follows:

“It will be sufficient, for the 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.... The court will not refuse leave to allow an amendment simply because it introduces a new case.... 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... The court will refuse leave to amend where the amendment would change the action into one of a substantially different character; or where the amendment would prejudice the rights of the opposite party existing at the date of the proposed amendment e.g. by depriving him of a defence of limitation accrued since the issue of the writ.”

12. Further guidance is provided in *Halsbury's Laws of England*, 4th Ed. (re-issue), Vol. 36(1) at paragraph 76, which explains:

“... The purpose of the amendment is to facilitate the determination of the real question in controversy between the parties to any proceedings, and for this purpose the court may at any stage order the amendment of any document, either on application by any party to the proceedings or of its own motion. ... The person applying for amendment must be acting in good faith. Amendment will not be allowed at a late stage of the trial if on analysis of it is intended for the first time thereby to advance a new ground of defence. If the amendment for which leave is asked seeks to repair an omission due to negligence or carelessness, leave to amend may be granted if the amendment can be made without injustice to the other side. ...”

13. In this case, the plaintiffs have illustrated that the proposed plaintiff, Harwood Limited entered into a primary contract with the 1st defendant which was executed by the 4th defendant. Subsequently, the 2nd and 3rd defendants entered into an auxiliary secondary contract which forms the subject matter of the suit herein. This is evidenced by the Term Sheet dated 20/7/2010, the Investment Option Agreement and Share Transfer Agreement produced as “SP1”, “SP2” and “SP3” in the plaintiff's supporting affidavit.
14. The explanation by the plaintiffs that the participation of Amin Akberali Manji can be adequately addressed as a witness rather than as a plaintiff, coupled with the supporting evidence, establishes sufficient grounds for the proposed amendments. It is however worth noting that the court should not delve into the merits of the proposed amendment at this stage in allowing or rejecting an amendment. This is because the merits are to be determined at the hearing of the suit. This position was affirmed by the Court of Appeal in *Coffee Board of Kenya V Thika Coffee Mills Limited & 2 Others*, [2014] KECA 409 (KLR).
15. In conclusion, I am of the view that Harwood Limited ought to be enjoined in this suit as the 2nd plaintiff as its presence will be necessary in order to enable the court to effectively adjudicate upon and settle all questions involved in the suit. Any prejudice suffered by the defendant can be remedied by costs and in any case, the defendants will have the opportunity to amend their statement(s) of defence if need be.



Disposition

16. Accordingly, the application dated 15/5/2024 is allowed. The plaintiffs are granted leave to amend the plaint, the witness statement, and to file a supplementary witness statement as sought in the application. The parties shall take directions on the timelines for filing and service of the amended pleadings. Costs shall await the outcome of the suit.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 6TH DAY OF DECEMBER 2024.

F. MUGAMBI

JUDGE

