



**Kambi v Ruston Global Holdings Limited (Environment and Land Case
E079 of 2020) [2025] KEELC 4673 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4673 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E079 OF 2020**

**JG KEMEI, J
JUNE 19, 2025**

BETWEEN

SAMUEL KAZUNGU KAMBI PLAINTIFF

AND

RUSTON GLOBAL HOLDINGS LIMITED DEFENDANT

RULING

1. The Plaintiff applicant moved Court vide the Notice of Motion dated the 29/1/25 seeking the following orders;
 - a. That the Plaintiff be granted leave to amend his plaint dated the 20/8/2020 as per the draft amended plaint filed herein.
 - b. The draft amended plaint be deemed as duly filed and served upon payment of the requisite fees.
 - c. Costs of the application.
2. The application is based on the grounds annexed thereto and the supporting affidavit of the applicant sworn on even date. The deponent deposed that it has become necessary to enjoin five (5) other defendants to the suit so that all the real issues in controversy between the parties are heard and determined and to facilitate final determination of the same on merits. That enjoining the five defendants will enable the applicant to fully plead and ascertain his claim and seek appropriate reliefs in the suit. That if the orders are not granted the interests of the applicant will be adversely and negatively affected. Lastly that there will be no prejudice to the defendant if the orders are granted.
3. The application is opposed vide the Replying Affidavit of 10/2/25 sworn by one Victor Kidiwa who introduced himself as the Managing Director of the Respondent and therefore has authority to so swear.



4. He argued that the application to amend the Plaintiff is time barred, misconceived and fatally defective and brought in bad faith and therefore an abuse of the court process. He decried the delay in prosecuting the suit for no cogent reasons having been given for the explicit inordinate delay. He enumerated several instances when the hearing of the suit was delayed at the instance of the Plaintiff.
5. In addition, he stated that the intended amendments introduce new causes of action especially under paragraph 19,20 and 22 of the draft amended plaintiff. That the amendments are prejudicial to the defendant as its ability to respond will be significantly impacted. That the court ought not permit any amendments that are inconsistent with the original pleading of the parties or that which entirely alters the nature of the defence or plaintiff. See [St Patrick's Hill School Limited v Bank of Africa Kenya Limited](#) (2018) eKLR.
6. The applicant states that the information leading to the application for amendment was with the Plaintiff since the filing of the suit but failed to seize the opportunity to include the 5 defendants in the suit. That the application is but a delay tactic employed by the applicant to evade his date with the law. That in any event failure to amend the pleadings will not prejudice the plaintiff nor affect the real determination of the issues in controversy as the burden of proof always rests with he who alleges, which in this case is the Applicant. He urged the court to dismiss the application.
7. Counsel for the applicant submitted that the general rule on the subject of amendment is that amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side and if there is no injustice then the other party can be compensated by costs. To that extent the Court was referred to the cases of [St Patrick's Hill School Limited v Bank of Africa Kenya Limited](#) (2018) eKLR; *Eastern Bakery v Castelino*, (1958) EA 461;
8. Counsel further added that the proposed joinder is necessary to allow the court to determine the real issues in controversy between the parties. That the proposed amendments do not alter the cause of action nor prejudice the Respondent in any way. On the other hand, he argued that to decline the orders will amount to denial of the opportunity to present its case and in any event it is not open for the Respondent to dictate how the applicant ought to present its case. It was further submitted that contrary to the contention of the Respondent no confusion will be occasioned to the prosecution of the suit by the proposed amendments. That the amendments will afford the defendants the opportunity to cross examine and produce any rebuttal documents during the hearing.
9. As to whether the applicant has established sufficient grounds to warrant leave to amend the Plaintiff, Counsel for the Respondent stated that the amendments are being made too late in the day. Further it was submitted that the sole issue for determination concerns the ownership of the suit land. That the applicant bears the burden to prove his ownership of the suit land and the additional parties may be called as witnesses without the necessity for amendment to include the five additional parties. That the proposed amendments are intended to cause delay in the administration of the justice and unnecessary delay in the prosecution of the suit. That the 6-year delay in filing the application is excessive inordinate and unexplained. As to the issue of prejudice, it was discussed that the applicant is in occupation of the suit land and the delay in prosecuting this matter is not in his interest. That the Respondent is paying rates loans and outgoings in respect to the suit land and therefore monetary award of costs would not be sufficient to compensate the Respondent. That the proposed amendments would introduce new and inconsistent claims prejudicing the Respondent further in that the Respondent will not have sufficient time to marshal a defence in his favour. That the claims are time barred in line with the provisions of Section 4 of the Limitations of Actions Act as they have been filed outside the period of 6 years contemplated in contractual transactions.



10. Having considered the application, the responses and the written submissions the key issue for determination is whether the application has merit.
11. The legal framework governing amendment of pleadings is found in Section 100 of the [Civil Procedure Act](#) which states as follows: -
- “The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”
12. Order 8 Rule 5 of the [Civil Procedure Rules](#) states as follows: -
- “(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.
2. This rule shall not have effect in relation to a judgment or order.”
13. Further, [Halsbury’s Laws of England](#), 4th Edition (re-issue) Vol.36(1) at Paragraph 76 sets out the requirements for an amendment thus;
- “...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.”
14. In the case of *Eastern Bakery v Castelino* (1958) EA 461, Sir Kenneth O’Conner, President of the predecessor of this Court stated that;
- “It will be sufficient ... 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.”
15. Similarly, in the case of [Central Kenya Ltd v Trust Bank & 4 others](#) Civil Appeal No. 222 of 1998, addressed the underlying principle in amendment of pleadings and joinder of parties to be
- “All amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”
16. According to the record the suit was filed in 2020 and the hearing is yet to commence about 5 years later. The court agrees with the Respondent that there has been unexplained delay in the prosecution of the suit. It is obvious that the delay in prosecuting the suit is prejudicial to the Respondent in terms of time and expenses. That said this court would be concerned to answer the question whether prejudice is such as can be compensable with costs and in the overall despite the inordinate delay whether justice can still be done to the parties.



17. I have looked at the proposed plaint and in my view the claims of the Applicant forming the cause of action are premised on the alleged fraudulent acquisition of the suit land which the Applicant claims. There appears to be competing claims over the suit land with the Respondent admitting that the applicant is in possession. In order to determine the issues raised with finality it is my considered view that the application is merited. It is trite that causes of action are better determined on merit so that the controversies surrounding the suit land and the rights of the parties may be determined all at once and in finality.
18. With respect to the issue whether or not the claims of the applicant are time barred based on the 6 years limitation period, the court cannot agree with the Respondent because the issue before the court is a claim for the recovery of land which under Section 7 of the *Limitation of Actions Act* is 12 years and not 6 years. I hold the view that greater injustice will occur if the application is denied than when it is allowed.
19. In the end the application is allowed as follows;
 - a. The applicant to file and serve the amended plaint within the next 14 days
 - b. Upon service the Defendants to file and serve their defenses within 14 days
 - c. Thereafter parties to prepare the suit for hearing expeditiously
 - d. I order the Applicant to pay throw away costs to the Respondent in the sum of Kshs 50,000/-
20. Orders accordingly

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF JUNE, 2025
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered Online in the Presence of*;

1. Ms. Onchagwa HB for Mr. Nyachoti for the Plaintiff
2. N/A for the Defendant
3. C/A – Ms. Yvette Njoroge

