

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELC NO E211 OF 2023

ETHICS & ANTI-CORRUPTION

COMMISSION

- **APPLICANT**

VS

NESCO SERVICES LIMITED

- **1ST RESPONDENT**

HARUN OSORO NYAMBOKI

- **2ND RESPONDENT**

JOEL JOSEPH MUSYIMI

- **3RD RESPONDENT**

JOHN NYAGA MAUKI

- **4TH RESPONDENT**

RULING

(with respect to the Applicant's Notice of Motion dated 4/11/24)

1. What is before the court for determination is the applicant's motion dated 4/11/24 seeking leave to amend the plaint in line with the draft annexed thereto.
2. The application is based on the grounds annexed thereto and the affidavit sworn by Feiza Abdi on 4/11/24. She deposed that the amendment of the plaint aims to specify the acreage of the suit land as well as the public official who issued the letter of allotment on behalf of the Commissioner of Lands. It also seeks to clarify the suits pending between the parties concerning the land in question.
3. The 1st and 2nd respondents opposed the application on the following grounds;

- a. First, the court lacks the jurisdiction to grant leave to amend a defective plaint, and secondly, the issue concerning the validity of the plaint is before the Court of Appeal in COA 889 of 2024.
 - b. The entire suit violates the provisions of sections 34 and 35 of the Advocates Act, and no amendment can remedy the consequences of failing to endorse the name of the drawer of the verifying affidavit accompanying the plaint.
4. Parties have filed written submissions, which I have read and considered.
 5. The key issue before the court is whether the application is merited.
 6. Section 100 of the Civil Procedure Act 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.”
 7. 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.”
 8. 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.”

9. In the case of **Eastern Bakery vs 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.”

10. Similarly, in the case of **Central Kenya Ltd vs 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.”

11. I have reviewed the record and observe that My Brother Mr. Justice Mwangi has extensively expressed his opinion on the issue of the validity or otherwise of the plaint in his ruling delivered on 24/9/24. The court has been informed that the 1st and 2nd Respondents have lodged an appeal on this matter at the Court of Appeal, and I must exercise restraint to avoid causing embarrassment to the appellate court. Importantly, there is no order staying the proceedings

in this case. Nonetheless, I must exercise caution and adhere to the hierarchical structure of our courts.

12. Regarding the draft amended plaint, I have reviewed it and find no prejudice that will be caused to the respondents. To ensure fairness, I will grant the respondents leave to amend their pleadings if they so wish.
13. Overall, I am persuaded that to facilitate the determination of the real questions in dispute between the parties, it is proper and just that the application be allowed.
14. Final orders for disposal
 - a. The application dated 4/11/24 is hereby allowed.
 - b. Upon service of the amended plaint, the respondents shall have corresponding leave of 15 days to amend their pleadings if so desired.
 - c. Thereafter, parties to expediently list the matter for case management and eventual hearing on priority basis.
 - d. Costs shall be in favour of the 1st and 2nd respondents
15. Orders accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

1. Ms Biwott for the Plaintiff
2. Mr Manyara for the 1st and 2nd Defendants
3. N/A for the 3rd and 4th Defendants
4. Ms Mutonyi for the Interested Party
5. C/A - Ms Yvette Njoroge

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