



Southshores Logistics Ltd & 4 others v Southshores Logistics Ltd & another (Civil Case 2 of 2023) [2025] KEHC 15063 (KLR) (Civ) (27 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15063 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA**

**CIVIL
CIVIL CASE 2 OF 2023**

**KW KIARIE, J
OCTOBER 27, 2025**

BETWEEN

**ANTHONY MAINA HENIA 1ST PLAINTIFF
CIGMA BUSINESS CENTRE LTD 2ND PLAINTIFF
HORIZON DRILLING CO. LTD 3RD PLAINTIFF
JAMES KABUGI KIMANI 4TH PLAINTIFF
JACINTA WANJIRU MACHARIA 5TH PLAINTIFF**

AND

**SOUTHSHORES LOGISTICS LTD 1ST DEFENDANT
COSTIN & WEBSTER LAW 2ND DEFENDANT**

RULING

1. The 1st defendant/applicant herein moved the court by way of a Notice of Motion dated the 17th of December 2025. They are seeking the following orders:
 - a. This application be certified urgent and service of the same be dispensed with in the first instance. [Spent]
 - b. The honourable court be pleased to order that this application be heard before the hearing of the main suit scheduled for the 27th October 2025.
 - c. The honourable court be pleased to grant the 1st defendant/applicant leave to amend its statement of defence and to file an amended witness statement.



- d. The honourable judge be pleased to stay proceedings in this matter pending the hearing and determination of Nyandarua Environment and Land Case Number E108 of 2023, Southshore Logistics Limited vs Mary Wanjiku Kanyotu & 3 Others.
 - e. Any other relief this honourable court may grant.
 - f. Cost of this application be provided for.
2. The application was premised on the following grounds:
- a. The 1st defendant/applicant appointed new counsel to act for it in this matter on the 20th June 2025.
 - b. The 1st defendant/applicant's new counsel, after perusing the pleadings filed herein, by all the parties and having been briefed by the 1st defendant/applicant, has found it necessary and important to amend the statement of defence filed on behalf of the applicant and also to file an amended witness statement.
 - c. The 1st defendant/applicant's defence and strategy will be highly prejudiced if this matter proceeds to trial while it has not amended its statement of defence and witness statement.
 - d. This matter is scheduled to come up for hearing of the main suit on the 27th October 2025. Therefore, it is imperative that this application be heard and determined before the matter proceeds to trial.
 - e. This suit was instituted by the plaintiffs for refund of purchase price received for sale of parcels of land title number Nyandarua/Mbuyu/9317, 9318, 9319, 9320, 9321, 9322, 9323, 9324 & 9325.
 - f. The 1st defendant/applicant is the registered owner of the above parcels of land and has sold them in good faith to the plaintiffs herein.
 - g. The 1st defendant/applicant has also handed over possession of the said parcels of land to the plaintiffs herein, and they have developed the said properties.
 - h. However, third parties/strangers have laid claim to the properties mentioned above and placed a restriction on the said properties; thus, the 1st defendant/applicant has not been able to transfer the properties to the plaintiffs; hence, the plaintiffs filed this claim for refund of the purchase price paid to the 1st defendant/applicant.
 - i. The 1st defendant/applicant has sued the above-mentioned third parties/strangers in Nyandarua Environment and Land Case Number E108 of 2023, Southshore Logistics Limited vs. Mary Wanjiku Kanyotu & 3 Others, for the removal of the restriction placed on its property, and it expects a positive outcome of the said suit;
 - j. Once the encumbrance placed on the 1st defendant/applicant's properties is removed, there will be no need for the claim filed herein by the plaintiffs because the applicant will be able to transfer the properties to the plaintiffs, who are already in possession of the said property.
 - k. Therefore, it is only just and fair that the proceedings herein are stayed pending the outcome of the ELC matter so that the proceedings herein are not rendered an exercise in futility and a waste of precious judicial time;
 - l. No party will be prejudiced if the prayers herein are allowed. However, the applicant will be prejudiced if the matter proceeds to a hearing without it amending its pleadings and if this



matter is concluded, and the applicant is ordered to refund the purchase price to the plaintiffs who are already in possession of the above-mentioned properties, and ELC courts order the removal of the encumbrance, allowing the applicant to transfer the properties to the plaintiffs.

- m. That it is only just and fair that the applicant's prayers herein are allowed as prayed.
3. The application was opposed by the 1st plaintiff/respondent on the following grounds:
 - a. That it is frivolous and incompetent.
 - b. That the proposed amended defence has not been attached.
 - c. That no nexus between this case and the one pending in the Environment and Land Court has been shown.
 4. In *Kassam vs Bank of Baroda (Kenya) Ltd* (2002) 1 KLR 294, Kuloba J., when confronted with a similar application, stated:

Normally delay in applying for leave to amend a pleading is not in itself fatal. Considerable delay in filing an application accompanied with the opponent acquiescing in the delay at all times relevant, may be excused: *Epaineto v Uganda Commercial Bank* [1971] EA 185. Thus, a long delay in making an application was excused when there was an explanation for it in that the parties were attempting to reach a settlement and there was every hope of a settlement out of court: *Motokov v Auto Garage Ltd and others (No 2)*, [1971] EA 353. In the instant application the only implied reason (appearing as a side wind and obliquely) for the delay appears to have been a change of advocates. There is no attempt to explain the late change of advocates. To accept this as an explanation for this delay might send a wrong message that a party who switches advocates may on that account alone get special treatment and get leave to come late to amend his pleading in a substantial way even if to do so may occasion a delay and disrupt judicial calendar. His substitution of lawyers needs to be explained. This was not done here. This delay in the absence of a good or any reason in the circumstances of this case suggests that the application was brought in mala fides, and simply to delay justice.

5. The learned judge went on to say:

I am quite alive to the liberal practice in the exercise of discretion whereby amendments of pleadings are freely allowed where this can be done without injustice and nearly always on terms (which sometimes may be so stiff as to be prohibitive), varying with the stage at which the amendment is sought to be made. But the special circumstances of the instant application make it unjust to allow the amendments to be made at this stage even though they are sought before trial. The factors which I have borne in mind include, as I have already shown, the material admissions which will still remain (not being a confession and avoidance); attempts at evasion; failure to plead facts from which it will be explained the circumstances of the defendant's conduct complained of; the defendant's substantial contribution to a number of adjournments of the hearings fixed by the plaintiff; frivolity sought to be perpetuated or introduced; likely delay of a fair trial; obvious attempt to abuse the legal process. Other factors have already been adumbrated to. It is in this context that leave to amend the defence is refused, and the application of the defendant is hereby dismissed with costs thereof in any event.



6. In the instant application, the applicant did not attach a copy of the amended defence to enable the court to consider it thoroughly and assess whether it meets the criteria for allowing the intended amendment. In *Kassam vs Bank of Baroda (Kenya) Ltd (supra)*, the learned judge spelt out the principles relating to amendment of pleadings as follows:

Firstly, that the amendments should be allowed if the court is satisfied that the party applying is not acting mala fide; it will not cause some injury to the other side which cannot be compensated by costs; is not a device to abuse the court process; is necessary for the purpose of determining the real questions in controversy; the amendment will not alter the character of the suit. Secondly, that in case of late amendments, the applicants must show that the delay is not deliberate and court exercises such discretion for or against the applicant. Thirdly, in exercising discretion, the court ought to consider whether the amendment embodies a legally valid claim; the reasons why the proposed amendment was not included in the original pleading and justification for the delay if any.

7. On the 6th day of March 2025, this matter was fixed for hearing by consent. The hearing was scheduled for the 23rd, 24th, and 25th of June 2025. On 23rd June 2025, the applicant requested an adjournment because they had just changed their advocate. The same party is seeking to amend its defence without providing a satisfactory reason.

8. Due to these critical omissions and the lack of explanation regarding the delay, I am therefore unable to determine whether the application for amendment is justified. This prayer must fail.

9. The jurisdiction of the Environment and Land Court is provided under section 13 (2) of the *Environment and Land Court Act* as follows:

In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes—

- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.

10. The pleadings show that this case seeks a refund due to a failed contract. The decisions of this court and the Environment and Land Court cannot conflict, as their mandates vary. The applicant has not demonstrated that this case will conflict with any decision that the Environment and Land Court might issue. The request for a stay of proceedings is therefore dismissed.

11. The upshot of the foregoing is that the application is dismissed with costs.

DELIVERED AND SIGNED AT NYANDARUA, THIS 27TH DAY OF OCTOBER 2025

KIARIE WAWERU KIARIE

JUDGE.

