



REPUBLIC OF KENYA



**Freudenthal & another v Ryrrie & another (Environment & Land Case E051 of 2023) [2025] KEELC 255 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 255 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E051 OF 2023  
FM NJOROGE, J  
JANUARY 30, 2025**

**BETWEEN**

**EMMANUEL FREUDENTHAL ..... 1<sup>ST</sup> PLAINTIFF**

**KAMINI KUMAR MENON ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**SONIA RYRIE ..... 1<sup>ST</sup> DEFENDANT**

**CHARLES BRUCE ARTHUR RYRIE ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. In the application dated 19/11/2024, the following prayers are sought:
  - a. That the amended plaint filed herein and dated 28<sup>th</sup> October 2024 be struck out with costs to the defendants;
  - b. That the costs of this application be paid by the plaintiffs.
2. The basis of the application is that the amended plaint was filed without leave of the court despite pleadings having closed on 29<sup>th</sup> February 2024; that the witness statements signed by Thomas Mason, Salim Al-Amin and the 1<sup>st</sup> plaintiff have also been filed without leave of court. The application is supported by the affidavit of Gikandi Ngibuini also dated 19/11/2024. The application is opposed. The plaintiffs filed grounds of opposition dated 9/12/2024. The grounds relied on are as follows:
  - a. The court delivered a ruling on 24/4/2024 and granted leave to the plaintiffs to amend their plaint and file further documents;
  - b. The matter came up for a scheduled trial conference but an application was filed seeking stay of proceedings pending hearing and determination of an intended appeal;



- c. That from 5<sup>th</sup> June 2024 to 25<sup>th</sup> September 2024 the parties and the court have been dealing with the defendant's applications;
  - d. That when the matter was scheduled for pretrial conference on 28<sup>th</sup> September 2024 the court was not sitting;
  - e. That the matter is yet to come up for case management and the 1<sup>st</sup> and 2<sup>nd</sup> defendants would not be prejudiced as they can file additional documents and witness statement;
  - f. That leave had been granted for the filing of the amended pleadings and witness statements in any event.
3. In the present matter the pleadings were filed on 15/12/2023 and the statement of defence was filed on 17/1/2024. The amended statement of defence was filed on 12/1/2024.
  4. The reply to defence and defence to set-off was filed on 9/2/2023. The amended pleadings were filed on 28/10/2024. Alongside the amended pleadings were other documents filed.
  5. I have examined the record in this matter. I find that no leave was granted by the court for the filing of any amended pleadings or the filing of further documents on 24/4/2024 or at any other time thereafter. It is correct that parties and court were busy with applications between 5<sup>th</sup> June 2024 and 25<sup>th</sup> September 2024. However, those applications were on other matters and not the propriety of amendment of pleadings. They did not thus free the parties from obligations to comply with the rules regarding the filing of the main pleadings. This is implied in Order 2 Rule 13 [CPR](#) which provides as follows:

“ 13. Close of pleadings [Order 2, rule 13]

The pleadings in a suit shall be closed fourteen days after service of the reply or defence to counterclaim, or, if neither is served, fourteen days after service of the defence, notwithstanding that any order or request for particulars has been made but not complied with.”

6. The period provided in Rule 13 would still run even if any order or request for particulars has been made but not complied with. This is indicative that notwithstanding the pendency of any applications, the said period runs.
7. It is undisputed that the last pleading before the amended pleadings was the amended defence served upon the plaintiff's advocates on 14/2/2024. 14 days from that date within which the amended pleadings ought to have been served expired on 28/2/2024. The amended pleadings were filed on 22/11/2024, almost 8 months later. It is not denied that it was filed without leave. Documents filed without leave of court are irregular.
8. In [Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others](#) [2014] eKLR it was held as follows:

“ However, it cannot be gainsaid that where the law provides for the time within which something ought to be done, if that time lapses, one need to first seek extension of that time before he can proceed to do that which the law requires. By filing an appeal out of time before seeking extension of time, and subsequently seeking the Court to extend time and recognize such ‘an appeal’, is tantamount to moving the Court to remedy an illegality. This, the Court cannot do. To file an appeal out of time and seek the Court to extend time is presumptive and in-appropriate. No appeal can be filed out of time without leave of the Court. Such a filing renders the ‘document’ so filed a nullity and of no legal consequence.



Consequently, this Court will not accept a document filed out of time without leave of the Court.”

9. This court is of the view that the amended plaint having been filed out of time ought to be struck out. It is crucial that the other parties be granted a chance to scrutinize the amendments proposed before they are deemed as effected, and if necessary, raise any proper objections which the court may either uphold or overrule. I think that the defendants have been denied an opportunity to comment on the purported amended plaint before it was filed. That in itself is irregular.
10. What about the documents? They include a witness statement of the 2<sup>nd</sup> plaintiff and a further witness statement of the 1<sup>st</sup> plaintiff. It is obvious that such documents, having not been filed together with the original plaint, are meant to support the statements in the plaint as purportedly amended. If the amended plaint is struck out they would serve no useful purpose in the record.
11. In *Alois Oceano D'sumba v Rajnikant Narshi Shah & another* [2017] eKLR the court, referring to Order 7 rule 5 *CPR* as to defence and the documents to be filed alongside it, held as follows:
  - “ 10. The above provisions are clear on the requirement for parties to file documents within certain parameters. If documents are not available as at the time of filing pleadings, a party should seek leave of the court to file the said documents before the hearing of the case commences. That is the one of the purposes for the directions that a court gives under the provisions of Order 11 of the *Civil Procedure Rules*. Any party wishing to introduce new or additional evidence must in similar light seek leave of the court to file such statements and/or documents before the hearing of the plaintiff's case.”
12. I do not think a separate standard should be applied to any of the documents that ought to have been filed with the plaint in this case. Leave ought to have been sought. As the plaintiff never sought leave, they too are irregular. The court can not refer to them. It is as though they were never filed in the first place.
13. The upshot of the foregoing is that the amended plaint dated 28/10/24 as well as all the witness statements filed alongside it are all hereby struck out. The costs of the present application shall be borne by the plaintiffs. This matter shall be mentioned on 19/2/2024 for directions.

**JUDGMENT DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC MALINDI**

