



REPUBLIC OF KENYA



KENYA LAW

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**Sikale (Suing as the Chairman of Karen Langata District Association)
v Karuna Holdings Ltd & 6 others (Environment and Land Petition
E060 of 2022) [2025] KEELC 5656 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5656 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND PETITION E060 OF 2022**

AA OMOLLO, J

JULY 24, 2025

BETWEEN

**SAMORA SIKALE (SUING AS THE CHAIRMAN OF KAREN LANGATA
DISTRICT ASSOCIATION) PETITIONER**

AND

KARUNA HOLDINGS LTD & 6 OTHERS & 6 OTHERS RESPONDENT

RULING

1. For determination is the application dated 17th March, 2025 brought under Rule 18 of *the Constitution* of Kenya Protection of Rights and Fundamental Freedoms Practice and Procedure Rules, 2013 and Order 8 Rules 3 and 5 of the Civil Procedure Rules and all other enabling laws. The Petitioner/ Applicant seeks leave to be granted to amend the petition in accordance with the draft amended petition exhibited within 7 days of the order of the court.
2. The application is premised on several grounds listed on its face summarised as; stealing a march, violating the doctrine of lis pendence/sub judice. The Applicant deposed that it filed objection to the 1st and 2nd Respondents application for change of user lodged on 4th September 2023. That all material times, the 4-6th Respondents were aware of the pendency of this suit which raised issues as against them. However, the 4th to 5th Respondents proceeded to approve the application on 7th March 2024.
3. The 1st and 2nd Respondents opposed the application for leave to amend vide the replying affidavit of Udi Gecaga sworn on 22nd April, 2025. He introduced himself as the executive chairman of the 1st Respondent and was also swearing on behalf of the 2nd Respondent. Mr Gecaga deposes that all along the Petitioner was aware of the change of user applications as early as September, 2023.
4. They (1st and 2nd Respondents) aver that issues now sought to be introduced through this amendment were well known to the Petitioner several months prior to the hearing date on 14.3.2025. That this is



evidenced by the contents of paragraph 4 of the Petitioner's further affidavit sworn on 11.9.2023 and paragraph 4 of the affidavit of 12.3.2025. They aver that the Petitioner was always ready to proceed and rejected their request vide the correspondence dated 16.10.2024 to take out the hearing dates of 23.1.2025 and 11.2.2025. In summary, the 1st and 2nd Respondents argue that the application for amendment has been brought after undue delay.

5. The 4th to 6th Respondents filed both grounds of opposition dated 25th March 2025 and a replying affidavit sworn by Patrick Akivaga on 28th April, 2025. Inter alia, the 4th -5th Respondents pleaded that the mere act of application for change of user does not constitute stealing a march as the said Respondents were exercising their rights. That the fact of the Petitioner only becoming aware of the change of user on 11th March, 2025 are not matters that should form the basis of amending the Petition.
6. The 4th, 5th and 6th Respondents aver that the doctrine of lis pendens operate to bind subsequent purchasers of property but it does not prevent them from exercising their Statutory mandate to consider and grant applications for change of user. They argue that the cases cited by the Petitioner are distinguishable. Further, they deposed that the Petitioner has not demonstrated that the proposed amendments are necessary rather they appear to introduce new causes of action that are not related to the original Petition. The 4th to 6th Respondents aver that they will be prejudiced by the amendment and urged the court to dismiss the application.
7. The application is brought under order 8(3) and (5) of the Civil Procedure Rules which state as follows;
 - “3(1) 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.
 - (2) Where an application to the court for leave to make an amendment such as is mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such subrule if it thinks just so to do.
 - (3)
 - (4)
 - (5) An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.”(underline for emphasis).
8. The Rules thus allow amendment of pleadings at any stage before judgement including as set out in sub-ruel 5 amending the cause of action. In this case, although the Petitioner has given his evidence, they had not closed their case. The Petitioner stated that he learnt of the approval for change of user granted to the 1st and 2nd Respondents on 11th of March, 2025 which is the date he was giving his testimony. That he got the information from the bundle of documents filed by the 1st and 2nd Respondents.
9. The date when this petition was filed speaks for itself. The documents relied on (approved change of user) forming the basis for seeking the amendment was granted after the Petition had lodged the



objection to the application. Although the 4th to 6th Respondents plead and submit that the existence of this case did not stop them from exercising their statutory mandate to consider the application made by the 1st and 2nd Respondents. Yet it is the grant of the impugned approval that has resulted in the change of cause of action by the Petitioner who pleaded that the 1st and 2nd Respondents were undertaking their operations without the requisite licences.

10. Further, the 4th to 6th Respondents argued that the leave should not be granted because the petition offends the doctrine of exhaustion but says nothing on the outcome of the objections lodged by the Petitioner. In any event, the issue of doctrine of exhaustion is a defence to the merit of the petition itself and not a defence to be considered whether or not to grant the leave to effect an already existing claim.
11. The 1st and 2nd Respondents averred that the application was brought after undue delay which is true to the extent that the Plaintiff became aware of the impugned information before giving his evidence but still chose to proceed with the hearing then subsequently move the court. However, part of the delay as explained by them was occasioned by the 4th to 7th Respondents who by 11th February, 2025 had filed their responses to the petition. The Petitioner could not indicate the need to amend the petition relying only on the responses of the 1st and 2nd Respondents on record then.
12. The 1st and 2nd Respondents submitted that the proposed amendments are not necessary as they shift focus to administrative actions which took place after the petition was filed which is distinct from the original claim premised on non-compliance. The Petitioner's reasons for bringing the amendment was due to the actions of Respondents taken while the petition was pending hence they cannot refuse the Petitioner the opportunity to amend to bring all issues touching on the matters in dispute.
13. It is also true that the amendment if allowed may result in re-opening of pleadings since if the leave is granted, the Respondents have corresponding leave as of right to reply to the amended petition. Despite this possibility of re-opening of pleadings after a witness has testified, Order 8 rule 3 and 5 of the Civil Procedure Rules still provide that an amendment be allowed.
14. The bad faith cannot be imputed on the Petitioner only because the Respondents contributed to the changes. Further, any prejudice to the Respondents the amendment may cause shall be compensated by way of costs and right of reply. Therefore, the application was brought late, the leave can still be granted in this case because the Petitioner was yet to close its case.
15. Consequently, I find that there is merit in the application dated 17th March 2025 and proceed to allow it on the following terms:
 - a. The Petitioner is granted leave to amend the petition. The amended petition shall be filed and served and served within seven (7) days of this order.
 - b. Corresponding leave to the Respondents to file and serve reply and or further affidavits to the amended petition within 10 days of service.
 - c. Costs of this application to the 1st and 2nd Respondents.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JULY, 2025.

A. OMOLLO

JUDGE

