



REPUBLIC OF KENYA



Guyo v Maisha Bora Limited & 4 others (Environment & Land Case 149 of 2018) [2024] KEELC 191 (KLR) (24 January 2024) (Ruling)

Neutral citation: [2024] KEELC 191 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 149 OF 2018
EK MAKORI, J
JANUARY 24, 2024**

BETWEEN

HAJILA BAJILA GUYO PLAINTIFF

AND

MAISHA BORA LIMITED 1ST DEFENDANT

WESTERN SUNSHINE COMPANY 2ND DEFENDANT

LAND REGISTRAR, KILIFI COUNTY 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

MICHAEL K. KATANA 5TH DEFENDANT

RULING

1. Notice of motion application dated May 22, 2023 sought leave to amend the plaint and have other parties introduced to the suit. The application is opposed by the 1st defendant who has also raised a preliminary objection to the same in the following manner:
 - a. No Consent was obtained before the institution of this suit and thus offending section 30(1) as read with section 2 of the *Land Adjudication Act* cap 284 Laws of Kenya;
 - b. Dispute Resolution Mechanism under sections 26 to 30 of the *Land Adjudication Act* was by-passed; Doctrine of Exhaustion was offended;
 - c. Section 13A of the *Government Proceedings Act* was by-passed; &
 - d. *Limitation of Actions Act* 12-year Rule was offended.
2. Having looked at the entire proceedings and the responses, this Court is of the view that the Preliminary Objection raised albeit targeting the application for amendment, addresses issues that have



not been placed before this Court, that is the PO would have been raised well after amendments and addressed when the parties to be joined would be in a position to have responded. What we have is putting the cart before the horse

3. I can see an amendment to the defence by the 1st defendant. I don't know if it was allowed with the leave of the Court. If it had been allowed then the other parties have a right to respond. I have also seen there is an application for joinder. It has also to be addressed before we take the preliminary issues.
4. At this point and in the spirit of active case management I will address the issue of amendment to the plaint first.
5. As stated in the case of *Central Bank of Kenya Ltd v Trust Bank Ltd* [2000] eKLR, amendment of pleadings is usually allowed under the following conditions:

“The settled rule with regard to amendment of pleadings has been concisely stated in Vol.2, 6th Ed. at P.2245, of the AIR Commentaries on the Indian Civil Procedure Code by Chittale and Rao, in which the learned authors state:

“that a party is allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.”

6. In the notice of motion dated May 22, 2023, the plaintiff /applicant wishes to introduce new parties to the suit as defendants. The amendment by the 1st defendant necessitated this. The amendment aims to have all parties on board to avoid the proliferation of suits over the same matter.
7. I will then think that at this stage the amendment to the plaint will be allowed. I also think the issue of all necessary parties in this suit ought to be addressed first. All parties are to file their pleadings and what they intend to rely on. Thereafter if there are preliminary objections to be raised by any of the parties, it be done at once before the matter is set down for hearing.
8. For the avoidance of doubt I have taken these measures to avoid the delays I am seeing in this matter arising from a plethora of applications in the suit some of which do not form or are not necessary in this suit. In the golfing language – ‘eyes on the ball’ – let us focus on the main hearing.
9. Application for amendment dated May 22, 2023 is hereby allowed. Costs in the cause.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 24TH DAY OF JANUARY 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Kimiti for the plaintiff

Ms. Aoko for the 1st Defendant

Mr. Murunga for the 6th proposed defendant

Court Clerk: Happy

In the Absence of



Ms. Otieno for the 5th Defendant

Mr. Munga for the 3rd and 4th defendants

