



Mindu (Suing as the administrator of the Estate of the Late Robert Maxwell Mburu) & another v Ndirangu & 2 others (Environment & Land Case 1543 of 2016) [2024] KEELC 160 (KLR) (18 January 2024) (Ruling)

Neutral citation: [2024] KEELC 160 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1543 OF 2016
EK WABWOTO, J
JANUARY 18, 2024**

BETWEEN

ANTONY MINDU (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE ROBERT MAXWELL MBURU) 1ST PLAINTIFF

RUTH WANJIKU MINDU 2ND PLAINTIFF

AND

ESTHER WARINGA NDIRANGU 1ST DEFENDANT

JOSEPH WAWERU CHEGE 2ND DEFENDANT

DANIEL KAMAU NDUNGU 3RD DEFENDANT

RULING

1. This ruling is in respect to the application dated 25th April 2023, in which the Applicants sought for the following orders;
 - a. That this Honorable Court be pleased to appoint one Margaret Mukuhi Keru as a personal legal representative to the estate of the deceased mother Simon Keru Kimani who passed on 21st July 2018.
 - b. That this Honorable Court be pleased to allow the amendment of the plaint to include the said Margaret Mukuhi Keru as per the attached draft amended plaint.
 - c. That this Honorable Court be pleased to make such order as are just and expediate in the circumstances.
 - d. That the costs in the main cause.
2. The application was supported by the affidavit sworn by Antony Mindu stating that:



- i. That Simon Keru was the 1st allottee over the suit property and having passed away it is imperative for a suitable administrator of the state be included.
 - ii. That for the real issues to be determined the estate of Mr. Keru should shed light on their ownership of the premises.
 - iii. That Mr. Keru sold and transferred the land to Mr. Joseph Kimani Gatheca who then transferred it to the 1st, 2nd and 3rd Defendant.
 - iv. There would be absolutely no prejudice that will be occasioned on parties if at all the orders sought are granted.
3. The Respondents vehemently opposed the application vide a Replying affidavit dated 4th July 2023 sworn by Esther Waringa Ndirangu and submissions dated 18th December 2023.
 4. I have considered the application and the written submissions and together with the authorities filed and the sole issue for determination is the application is merited and deserving of the prayers sought.
 5. The applicants argued that Simon Keru Kimani (deceased) alleged to have bought the suit property and transferred the same to Joseph Kimani Gatheca who again sold and transferred to the 1st, 2nd and 3rd Defendants and that in view of the same, it is necessary to amend the plaint and bring on board the estate of Mr. Keru and Mr. Joseph Kimani.
 6. The respondents opposed the application and submitted that the applicants ought to have known their case beforehand and from the that they cannot now be allowed to litigate by instalments after learning of their gaps in their case. It was also submitted that there have been no new issues and that the issues proposed in their amendment ought to had been with them all this time.
 7. It was also contended that the proposed amendment is statute barred since the cause of action arose on the 9th December 1992 and 12th March 2003 and 28th October 2009 as against the proposed 4th Defendant and proposed 5th Defendant.
 8. It is trite law that amendments allowed in a case should not have the effect of causing injustice to the other side nor should it amount to an abuse of the process of the court. In *Daniel Ngetich & Another v KRep Bank Limited* 2013 KLR it was held that:

“Normally the Court should be liberal in granting leave to amend pleadings. But it must never grant leave if the court is of the opinion that the amendment would cause injustice or irreparable loss to the other side or if it is a devise to abuse the process of the court.”
 9. Moreso, amendments should not be allowed where the defendant would be deprived of his right to rely on Limitations Acts – see the Court of Appeal decision in *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* (2013)eKLR.
 10. In the instant case, I have first considered the applicants averments that the proposed 4th and 5th defendants being initial allottees would have a significant role to play in the trial and be called upon to shed light on their ownership. However having perused the evidence adduced herein, it is clear that 4th and 5th proposed defendants had long relinquished their ownership of the suit properties to the current 1-3rd Defendants as evidenced in Entry 2 and 4 (see AM-3).
 11. I have also considered the fact that this suit has been in court for over 8 years and is now at hearing stage. The Court is duty bound to ensure timely dispensation of justice. In my opinion the applicants



have had ample opportunity to amend the plaint accordingly (having done so twice before in 2017 and 2019) and therefore I consider that the application is brought too late in the day.

12. In view of the foregoing, this court agrees with the submissions made by the 1st, 2nd and 3rd defendants and it is satisfied that it is not necessary to join the Proposed 4th, 5th and 6th defendants to the suit herein. Consequently, the joinder of new parties in the instant case at this stage will amount to an abuse of the process of the court.
13. In the circumstances, this court finds that the application dated 25th April 2023, is unmerited and the same is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH JANUARY 2024

E.K. WABWOTO

JUDGE

In the presence of:

Mr. Muturi h/b for Mr. Kanyi for the Plaintiffs/Applicants

Ms. Nyaguthie for the 1st to 3rd Defendants/Respondents.

Court Assistant; Caroline Nafuna.

