



**Public Service Club Registered Trustees v Kariithi & 3 others (All Four Duly Appointed Executors and Holders of a Grant of Probate of the Will of Geoffrey Karekia Kariithi - Deceased) (Environment and Land Case Civil Suit 3000 of 1993) [2024] KEELC 1614 (KLR) (20 March 2024) (Ruling) (with dissent)**

Neutral citation: [2024] KEELC 1614 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 3000 OF 1993**

**EK WABWOTO, J**

**MARCH 20, 2024**

**BETWEEN**

**THE PUBLIC SERVICE CLUB REGISTERED TRUSTEES ..... PLAINTIFF**

**AND**

**MARY WANGECI KETHI KARIITHI ..... 1<sup>ST</sup> DEFENDANT**

**MARGARET NJOKI KARANJA ..... 2<sup>ND</sup> DEFENDANT**

**NGARI KARIITHI ..... 3<sup>RD</sup> DEFENDANT**

**KIBUGA KINYUA KARIITHI ..... 4<sup>TH</sup> DEFENDANT**

**ALL FOUR DULY APPOINTED EXECUTORS AND HOLDERS OF A  
GRANT OF PROBATE OF THE WILL OF GEOFFREY KAREKIA KARIITHI -  
DECEASED**

**RULING**

**Ruling**

1. The application before court filed by the Plaintiff is dated 13<sup>th</sup> December, 2023 and it seeks the following reliefs: -
  1. The Plaintiff herein, be allowed to amend its Plaintiff as per the proposed Further Amended Plaintiff annexed hereto.
  2. That the Draft Further Amended Plaintiff herein be deemed as duly filed and served subject to payment of the requisite court fees.
  3. That the costs of the application be provided for.



4. That such other and/or further relief be granted as this Honourable Court might deem fit and just to grant.
2. The application was premised on the grounds that this suit was initially heard and judgment delivered by Justice P. Nyamweya on 17<sup>th</sup> June, 2014 wherein the Plaintiff's suit was dismissed. Aggrieved by the said judgment the Plaintiff Appealed to the Court of Appeal vide Civil Appeal No. 235 of 2016. The said appeal was finally heard and determined in the judgement delivered on 8<sup>th</sup> November, 2019. The Court of Appeal set aside the High Court Judgement and ordered the suit to be remitted back to the Environment and Land Court for hearing and determination. After considering what has transpired both in the High Court and the Court of Appeal, it become necessary to amend the plaint. No prejudice shall be suffered by the Defendants as it is only fair and just for this Honourable Court to hear and determine all the issues in the suit.
3. The application is supported by the affidavit of Halake Dida the Ag. General Manager of the Plaintiff sworn on 13<sup>th</sup> December, 2023. It was averred that the amendments are necessary to enable this court fully determine all the facts and issues in this suit.
4. The application was opposed vide the grounds of objectio dated 12<sup>th</sup> February, 2024. It was stated that the inordinate and unjustifiable delay of four years in filing the application herein renders the application untenable. The Plaintiff's further amended plaint shall be gross, hopelessly and outrightly statute barred and therefore, completely inadmissible. It was contended that the Plaintiff has enjoyed protective orders of the court for over 31 years to the detriment of the deceased and now his estate, if the application is allowed, it would amount to serious injustice and prejudice to the estate of the deceased. It was also contended that in so far as the application is primarily anchored on the fact that the amendment of 18<sup>th</sup> July, 1997 was done by the advocate formally on record is not a valid reason to allow the amendments.
5. It was stated that the Plaintiff seeks to pre-empt the issues that will be raised during the hearing of the matter on merits and amend its plaint with the benefit of the two decisions made in this case and the same amounts to an abuse of the court process.
6. It was contended that the Plaintiff has not provided before this court any probable cause to be granted leave to further amend its plaint and therefore the same should not be allowed by this Honourable Court. It was stated that since the Plaintiff had already pleaded the particulars of fraud against the deceased, and the proposed amendments have been in its knowledge long before they brought this suit against the deceased and therefore the amendments are frivolous and an abuse of the court process.
7. It was further contended that if the application is allowed, the Plaintiff shall be allowed to commence proceedings against the defendants which are statute banned and have no chances of success. The grant of amendment of Plaint would be inimical to the provisions of Sections 1A and 1B of the Civil Procedure Rules and could also violate the Defendants rights to fair hearing as envisaged under Article 50(1) of the Constitution, 2010 as read together with Article 159(2) (6) of the Constitution of Kenya 2010.
8. Parties were permitted to make oral submissions in support of the application. Learned Counsel J.P. Machira who appeared for the Plaintiff argued that the suit was yet to proceed after it had been referred to this court by the Court of Appeal and that no prejudice would be suffered by the Defendants. He urged the court to allow the application as prayed. He also submitted that the grounds of opposition filed by the Defendant's cannot be treated as response to the Plaintiff's affidavit.



9. Learned Counsel Elijah Mwangi who appeared on behalf of the Defendants argued that the matter has been pending for 30 years and that the proposed amendments makes personal allegations against the Plaintiff who passed away. It was argued that the new allegations are so diverse from the previous position. The delay herein is so inordinate and such delays are not acceptable. It was also submitted that the allegations of fraud have a limitation of time under Cap 22 since the issue arose in 1975. So much time have run out and that the amendments only seek to improve the suit. The court was urged to decline the same.
10. This Court has considered the application and oral submissions made by the Counsel for the parties together with the grounds of opposition filed, the only issue to consider is whether the application for further amendment of the plaint is merited to warrant the grant of the orders sought.
11. The application was filed pursuant, inter alia, to Order 8 Rule 3(1) of the [Civil Procedure Rules](#) which provides that;

“...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.”

And Rule 5(10) in particular provides that:-

“For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”
12. The rationale for amendment of pleadings need not be belaboured; it is so that the Court can then effectively and effectually determine the issues in controversy between the parties to the suit and therefore should be freely allowed, especially if made before the commencement of the hearing.
13. Accordingly, if the Court is satisfied that good cause has been shown for it, it ought to allow an amendment, notwithstanding previous amendments. In this case, the Plaintiff averred in the Supporting Affidavit that circumstances have changed since the last amendment and that it is therefore necessary to align the Plaint to accord with those changes considering that the matter has been up to the Court of Appeal and referred to this court for hearing and determination. That, to my mind, is a justifiable cause and since the hearing is yet to commence, no prejudice will be suffered by the Defendants for which an award of costs would be insufficient as a recompense. In *Eastern Bakery v Castelino* [1958] EA 461 it was held thus:

“...amendment to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs.”
14. As regards to the objections raised by the Defendants on the aspects of delay and that the proposed further amended plaint being statute barred, there will be no prejudice suffered by them since the same can still be attacked during trial. The hearing herein is yet to commence and the Defendants will still have a chance to amend their defence if so desired.
15. The Court of Appeal in considering a similar issue for amendment of pleadings stated in the case of [Philip Chemwolo vs Augustine Kubende](#) [1985]eKLR 492 that the duty of the Court is to do justice to the parties and not to punish them for their mistakes or omissions.



16. This court is of the view that the proposed amendments will ensure that the dispute between the parties is resolved expeditiously and with finality. This is so having regard to the fact that the pleadings can as a rule be allowed at any stage of the litigation before trial has commenced.
17. In conclusion, the application dated 13<sup>th</sup> December, 2023 is hereby allowed in the following terms: -
- a. The Plaintiff is granted leave to file and serve the Further Amended Plaint within 7 days from today.
  - b. Upon service, the Defendants shall have 7 days to amend their defence.
  - c. The Plaintiff shall pay throw away costs of Kshs. 50,000 to the Defendants herein within 7 days from today.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF MARCH, 2024.**

**E.K. WABWOTO**

**JUDGE**

**In the presence of:-**

**Mr. Kegode holding brief for Mr. J.P. Machira for Plaintiff.**

**Ms. Njagi holding brief for Mr. Elijah Mwangi for Defendants.**

**Court Assistant: Caroline Nafuna**

