



REPUBLIC OF KENYA



KENYA LAW
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**Kilonzo v Kongoni River Farm Limited & 4 others (Environment & Land
Case 26 of 2021) [2024] KEELC 4215 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 4215 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 26 OF 2021**

AK BOR, J

APRIL 29, 2024

BETWEEN

DOMITILLA MUMBUA KILONZO PLAINTIFF

AND

KONGONI RIVER FARM LIMITED 1ST DEFENDANT

AGNES WANDAI KIMATA 2ND DEFENDANT

THE LAND REGISTRAR NANYUKI 3RD DEFENDANT

THE CHAIRMAN NATIONAL LAND COMMISSION 4TH DEFENDANT

THE ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. The Plaintiff brought the application dated 1/11/2023 seeking leave to amend her plaint dated 22/4/2020 further and to have the further amended plaint dated 24/5/2023 deemed as duly filed upon payment of the requisite court fees. The application was made on the grounds that the amendment sought was necessary to enable this court effectively, justly and conclusively adjudicate and settle all questions and issues in dispute in the suit. Further, that the Plaintiff omitted a crucial prayer which is necessary for this court to consider and address. The Plaintiff contended that the Defendant would not suffer any prejudice which could not be compensated by costs if the proposed amendments were allowed. The Plaintiff swore the supporting affidavit.
2. The 1st Defendant filed grounds of opposition, mainly contending that the application was an abuse of the court process and was brought late in the day after the matter had been certified ready for hearing. The 2nd Defendant maintained that the application was intended to delay the determination of the matter and added that the court had already made a determination on the issue of amendments vide its ruling of 24/10/2023.



3. The 2nd Defendant filed grounds of opposition to the application. The grounds were that the court had already pronounced itself on the subject matter of the application and that it was made with inexcusable delay. Further, that the amendment sought under prayer (iii) could not stand as it would amount to judicial review being instituted unprocedurally and without any material being placed before the court.
4. The issue for determination is whether the court should grant the Plaintiff leave to amend her claim once more. The 2nd Defendant contended that the court had already pronounced itself on the issue of amendment. In the ruling delivered on 24/10/2023, the court found that the further amended plaint dated 24/5/2023 was improperly before the court because it had been filed without the court's leave. The Plaintiff was directed to move the court in the appropriate manner.
5. Contrary to the grounds of opposition raised by the 1st and 2nd Defendants, the ruling did not deal with the issue of amendment but rather, it addressed the impropriety of the amended pleading being on the record without leave having been granted for the new amendments.
6. The law on amendment of pleadings is governed by Order 8 of the *Civil Procedure Rules* which grants the court the discretion to allow amendments of its own motion or on the application by any party for the purpose of determining the real question in controversy between the parties or of correcting defect or error in the proceedings.
7. The Plaintiff is granted leave to amend her plaint further. The Further Amended Plaint is to be filed and served within 7 days of the date of this ruling. The costs of the application shall be in the cause.

DELIVERED VIRTUALLY AT NYAHURURU THIS 29TH DAY OF APRIL 2024.

K. BOR

JUDGE

In the presence of: -

Ms. Sharon Manyariki for the Plaintiff

Mr. Zephaniah Makori for the 1st Defendant

Mr. Mwangi Kariuki for the 2nd Defendant

No appearance for the other Defendants

