



REPUBLIC OF KENYA



Heber Investments Limited & another v Ouko & another (Environment & Land Case 778 of 2014) [2024] KEELC 3748 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3748 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 778 OF 2014**

**LN MBUGUA, J
APRIL 24, 2024**

BETWEEN

HEBER INVESTMENTS LIMITED 1ST PLAINTIFF

BERNADETTE WANJIRU MWANIKI 2ND PLAINTIFF

AND

ROSELYN DOLA OUKO 1ST DEFENDANT

AARON TAFARI OUKO 2ND DEFENDANT

RULING

1. Before me is the Plaintiff's Notice of Motion dated 16.10.2023 seeking orders to amend the plaint in order to join the Director of survey in these proceedings and to file additional evidence.
2. The application is premised on the grounds on the face of the application and the supporting affidavit of the 2nd plaintiff. She contends that she is a director of the 1st plaintiff a company they formed with her late husband and that together, they acquired parcel No. LR. 3589/41 from Jason Atinda in 1990.
3. That around year 2001 after the death of Atinda, his family hired the deponent as a planner to help them in approval process of the subdivision of parcel L.R. 3589/6, of which her professional fees were computed as an additional portion of land adjacent to parcel 3589/41. She completed the assignment but the information she has given was omitted from her pleadings.
4. The defendants have opposed the application vide the replying affidavit of the 2nd defendant dated 16.11.2023 contending that the plaintiffs have never prosecuted this matter since year 2014, and have now been jolted by the fact that a hearing date has been given, hence the application is an abuse of the court's processes.
5. He added that the plaintiffs claim is not supported with any documents and the alleged contract between them is vehemently denied.



6. I have duly considered the arguments raised herein including the rival submissions, those of the plaintiffs dated 14.12.2023 and those for the defendants dated 30.1.2024. Both parties have cited the correct position of the law on amendment to the effect that amendments serve the purpose of determining the real issues in controversy and that it is the policy of the law that amendments of pleadings are to be freely allowed unless the opposite party stands to be prejudiced.
7. The law governing issues of amendments is to be found under Order 8 Rule 5 (1) of the *Civil Procedure Rules*, 2010 which 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”.
8. The Court of Appeal for East Africa in the locus classicus case of *Eastern Bakery v Castelino [1958] EA 461* held that amendments sought before the hearing should be freely allowed if they can be made without injustice to the other side.
9. In the case of *Kassam v Bank of Baroda (Kenya) LTD [2002] 1KLR 296* cited in the case of *Daniel Ngetich & Another v K-rep Bank Limited [2013] eKLR*, it was stated that;

“The court has power to allow necessary amendments to pleadings at any stage, but the granting or refusal of an application for such leave to amend is a matter within the discretion of the trial judge”.
10. A perusal of the draft amended plaintiff reveals that the plaintiff has raised issues relating to subdivisions of the mother title as well as amalgamations of some of the resultant parcels of which the relevant survey plans are deposited at the survey department. One of the prayers sought in the draft amended plaintiff is the amendment of the survey records. I find that the real issues in controversy would not be well articulated if the amendments are not allowed.
11. The plaintiffs have not given a plausible account as to why they are bringing the amendments 10 years after the suit was filed. But again, the court takes cognizance that the hearing is yet to take off. In the circumstances, the court will give strict directions geared towards the fast tracking of the case.
12. In the end, the application dated 16.10.2023 is hereby allowed in the following terms;
 1. The Amended plaintiff is to be filed and served alongside any additional documents and witness statements to all parties within 30 days.
 2. The plaintiff is directed to take out summons to enter appearance against the new parties and serve the same within 30 days.
 3. The defendants are to file and serve their defenses/amended defenses alongside any witness statements and documentary evidence within 30 days from the date of service.
 4. The affidavits of services shall be filed in the portal (CTS).
 5. Any documents filed or served outside the given time lines shall stand as expunged. Further, in the event of none compliance with any of the directions given herein by the plaintiff, the order allowing the amendments shall lapse at the end of the 30 days from the date of delivery of this ruling



6. The plaintiff is condemned to pay costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF APRIL, 2024
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

Court assistant: Eddel

