



Ridderskamp & another v Chief Officer Department of Lands Planning & Housing County Government of Mombasa & another (Environment & Land Case 438 of 2017) [2025] KEELC 836 (KLR) (26 February 2025) (Ruling)

Neutral citation: [2025] KEELC 836 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 438 OF 2017
SM KIBUNJA, J
FEBRUARY 26, 2025**

BETWEEN

KLAUS RIDDESKAMP 1ST PLAINTIFF

ULRIKE GEHRING 2ND PLAINTIFF

AND

**CHIEF OFFICER DEPARTMENT OF LANDS PLANNING & HOUSING
COUNTY GOVERNMENT OF MOMBASA 1ST DEFENDANT**

SHABAN MWALIMU, VOICE OF YOUTHS LIKONI 2ND DEFENDANT

RULING

Notice Of Motion Dated 30th December 2019

1. The 1st defendant filed the application dated 30th December 2019 seeking for the following orders:
 1. “That the 1st Defendant be granted leave to amend its Defence dated 28th June 2018.
 2. That the annexed Draft Amended Defence be deemed duly filed and served upon payment of the requisite filing fee.
 3. That this Honourable Court be at liberty to make any other orders it may deem fit and just to grant in order to meet the ends of justice.
 4. That the costs of this application be costs in the cause.”
2. The application is based on the five grounds on its face marked (i) to (v) and supported by the affidavit of Jimmy Waliaula, director of legal services, sworn on 30th December 2019, inter alia that the then holder of the 1st defendant’s office had left office by the time their statement of defence was filed; that after perusing the matter afresh, and on advice of their counsel, they have found the need to amend



the 1st Defendant's defence to properly bring out the issues in controversy; that the amendment will not prejudice the plaintiff.

3. The application is opposed by the 1st plaintiff through the replying affidavit sworn on 15th August 2024, in which he inter alia deposed that the annexed draft amended defence is riddled with falsehoods, designed to delay and is completely devoid of merit; that the 1st defendant waited 2 years before making this application, and is an afterthought; that the application was not brought within reasonable time; that when the chief officer's term came to an end his responsibility ought to have been managed by a new chief officer or even an officer in acting capacity; that the then chief officer should have prepared a handing over report to the incoming or acting officer; that Mr. Waliaula has no capacity to depone the supporting affidavit and the application should be struck out; that the plaintiff has been on a quest for justice for a long period of time and is thus against the interest of justice, fairness, equity and the rule of law as well as the constitutional fundamental rights and freedoms.
4. The 1st defendant filed a supplementary affidavit sworn on 8th October 2024 by Mr. Waliaula, inter alia calling the plaintiff's depositions in the replying affidavit uncalled for and untrue, considering the amendments will not change the nature and character of the suit; that there was no inordinate delay in bringing the application considering the lengthy process involved in the replacement and appointment of a county chief officer under the [County Governments Act](#); that contrary to the statements by the plaintiff, the court generally allows applications for leave to amend pleadings where in the opinion of the court it will not occasion an injustice to the other party.
5. The learned counsel for the plaintiff and the 1st defendant filed their submissions dated the 4th January 2025 and 28th January 2025 respectively, which the court has considered.
6. The following are the issues for the determinations by the court:
 - a. Whether the 1st defendant has met the threshold for amendment of pleadings.
 - b. Who bears the costs?
7. The court has carefully considered the grounds on the application, affidavit evidence, submissions by the learned counsel, superior courts decisions, the record and come to the following findings:
 - a. Amendment of pleadings is generally allowed by courts, under section 100 of the [Civil Procedure Act](#) chapter 21 of Laws of Kenya, for purposes of determining the real questions. Counsel for the 1st defendant relied on a Court of Appeal decision in the case of Central Kenya versus Trust Bank Ltd & 5 Others (2000) eKLR and argued that the proposed amendments do not introduce a new or inconsistent cause of action as held by the 1st plaintiff. They further argued that this application was filed in good faith and was not inordinate, as it was filed before the first hearing of the main suit. The argument by counsel for the plaintiff was that they are not satisfied with the explanation by the 1st defendant about the change of a new Chief Officer of the 1st defendant.
 - b. In the Central Kenya case (supra) the court held that:

“... 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.”



This suit was filed on 30th July 2017, and by the time the amendment application was filed on 24th January 2020, about two and a half years had lapsed, and from the date of filing the application and now, about five years have passed, and all along the suit is yet to be heard for various reasons. The claim that the application will delay the suit does not appeal convincing, and in any case the 1st defendant has tendered a reasonable explanation as to why the application was not filed earlier. The concern of the court is whether the amendments prejudices the plaintiff, and if it will help the court determine the issues raised. I do not find any reason to claim that the amendments will prejudice the plaintiff.

- c. It is now exactly seven years since the suit was filed and the dispute is still pending. The court will not go into the merits of the defence but it is satisfied that the amendments do not change the position held by the 1st defendant in its earlier defence. Further, the court is not satisfied that it is a delay tactic as the plaintiff himself is guilty of also delaying the suit as he had an issue of getting legal representation since 16th March 2023 until 29th April 2024. As the maxim goes he who seeks equity must do equity. This court has an overriding objective under sections 1A, 1B and 3A of the *Civil Procedure Act* to ensure that this suit is determined efficiently, expeditiously and unjustly, and allowing of the application will ensure the prosecution of the suit can finally commence.
 - d. Under section 27 of the *Civil Procedure Act*, costs follow the events, unless where for good cause the court finds otherwise. In this instance, I find justice of the suit will be served better, by an order that costs abide the outcome of the suit.
7. From the foregoing determinations, the court finds and orders as follows:
- a. The application 30th December 2019, is allowed and 1st defendant granted leave to amend their defence as proposed in the annexed draft.
 - b. That the 1st defendant to file and serve the amended defence in thirty (30) days.
 - c. That the costs of this application to be in the cause.

Orders accordingly.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 26TH DAY OF FEBRUARY 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Plaintiffs : M/s Auma

Defendants : Mr Walela For 1st Defendant

Mr. Mwamboje For 2Nd Defendant

Shitemi – Court Assistant.

S. M. Kibunja, J.

ELC MOMBASA.

