



Kalume & 16 others & another v Legal Representative of Cassam Suleiman Sumar & Haji Dad Kumberi (Executors of the Estate of Haji Suleiman Sumar Khamisa) & 2 others; Ruda (Applicant) (Environment & Land Case 194 of 2010) [2024] KEELC 3311 (KLR) (24 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3311 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 194 OF 2010**

SM KIBUNJA, J

APRIL 24, 2024

BETWEEN

KAHINDI CHARO KALUME & 16 OTHERS PLAINTIFF

AND

HARJI GOVIND RUDA APPLICANT

AND

LEGAL REPRESENTATIVE OF CASSAM SULEIMAN SUMAR & HAJI DAD KUMBERI (EXECUTORS OF THE ESTATE OF HAJI SULEIMAN SUMAR KHAMISA) 1ST DEFENDANT

HAKIKA TRANSPORT SERVICES LTD 2ND DEFENDANT

MUNICIPAL COUNCIL OF MOMBASA 3RD DEFENDANT

AND

HARJI GOVIND RUDA APPLICANT

RULING

1. The applicant moved the court through the notice of motion dated the 26th January 2023 seeking for *inter alia*, leave to amend the application dated the 15th September 2022 as per the annexed draft. The application is based on the five (5) grounds on its face and supported by the affidavit of Brian Borona advocate sworn on the 26th January 2023. It is the applicant's case that he omitted the order and grounds when filing the application dated the 15th September 2022.
2. Though I have not seen any reply to the application on record, Mr. Tindi, learned counsel for the plaintiffs has filed unsigned written submissions dated the 31st January 2024 which the court



has considered. At paragraph 4 of the said submission, counsel made reference to their grounds of opposition dated the 30th January 2023. The court will take it that counsel has covered the gist of their grounds of opposition in the said submissions.

3. The learned counsel for the Applicant filed written submissions in support of the application dated the 13th October 2023 which the court has also considered.
4. The main issues for determination by the court are as follows:
 - a. Whether the applicant has made a reasonable case for leave to amend the notice of motion dated the 15th September 2022 to be granted.
 - b. Who pays the costs?
5. The court has carefully considered the grounds on the application, affidavit evidence, submissions by the learned counsel, the record and come to the following conclusions:
 - a. That though not captured or cited at the heading of the application, the general power to amend court documents is as set out in Order 8 Rule 5 of the *Civil Procedure Rules* that provides that:
 - “5. For the purpose of determining the real question in controversy
 - (1) 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.
 - (2) This rule shall not have effect in relation to a judgement or order.”
6. In view of the foregoing conclusions, the court finds and orders as follows:
 - a. That leave to amend the notice of motion dated the 15th September 2022 as prayed in the notice of motion dated the 26th January 2023 is hereby granted.



- b. The amended notice of motion, in the terms in the attached draft, to be filed and served in fourteen (14) days and in default the leave to automatically lapse.
- c. The applicant to meet his own costs in the application dated the 26th January 2023.

Orders accordingly.

DATED AND VIRTUALLY DELIVERED ON THIS 24TH DAY OF APRIL 2024.

S. M. Kibunja, J.

ELC MOMBASA.

In the Presence of:

Plaintiffs : Mr Tindi

Defendants : M/s Njuguna for Kibaara for 3rd Defendant.

Applicant/Intended Defendant : Mr Borona

Applicants/Intended Plaintiffs : Mr. Abaja

Wilson – Court Assistant.

