



REPUBLIC OF KENYA



KENYA LAW
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**Muthui v Simba & 2 others (Environment & Land Case
17B of 2020) [2024] KEELC 3763 (KLR) (23 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3763 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 17B OF 2020**

TW MURIGI, J

APRIL 23, 2024

BETWEEN

STEVE RUKWARO MUTHUI PLAINTIFF

AND

JEREMIAH MUTAVI SIMBA 1ST DEFENDANT

ZION MOVERS INVESTMENT SELF HELP GROUP 2ND DEFENDANT

LAND REGISTRAR MAKUENI COUNTY 3RD DEFENDANT

RULING

1. By a Notice of Motion dated 31st October 2023 brought under Order 40 and 51 of the Civil Procedure Rules, Section 1A, 1B and 3A of the *Civil Procedure Act* and all other enabling provisions of the law, the Applicant seeks the following orders:-
 - i. That this Honourable Court be pleased to amend the Plaint and any other document filed by the Plaintiff/Applicant herein to adopt the names Steve Rukwaro Muthui and drop the name Stephen as variously used in this suit.
 - ii. That the annexed Plaint be deemed as filed.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Steve Rukwaro Muthui sworn on even date.

The Applicant's Case

3. The Applicant averred that his name is Steve Rukwaro Muthui as appears in his National Identity Card. He further averred that he is variously known and referred to as Stephen or Steve Rukwaro Muthui. He urged the court to adopt his name as it appears in the national identity card so as to resolve the real controversy in this suit.



4. Though duly served, the Defendants did not file any response to the application.

Analysis And Determination

5. Having considered the application, the only issue that arises for determination is whether the Applicant is entitled to the orders sought.

6. Amendment of pleadings is governed by Section 100 of the [Civil Procedure Act](#) and Order 8 of the [Civil Procedure Rules](#).

7. Order 8 Rule 3 of the [Civil Procedure Rules](#) 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.

8. Further, Order 8 Rule 5 gives the court the general power to amend and provides as follows:-

“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 on 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.”

9. It is trite law that an amendment should be allowed freely at any stage of the proceedings as long as the amendment does not cause prejudice or injustice to the opposing side which cannot be remedied by costs.

10. The principles for consideration in an application for amendment were set out in the case of [Ochieng and 2 Others vs First National Bank of Chicago](#) Civil Appeal No. 147 of 1991 as follows:-

- a. The power of the court to allow amendments is intended to determine the true substantive merits of the case.
- b. The amendment should timeously be applied for
- c. Power to amend can be exercised by the court at any stage of the proceedings
- d. That as a general rule however late the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side.

11. In the case of [Central Kenya Limited v Trust Bank Limited & 5 Others](#)(2000) 2 EA 365 the court held that:-

“...a party is allowed to make such amendments as maybe 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”.

12. In the matter at hand, the amendment is seeking to reflect the Plaintiff’s name as it appears in the National Identity Card. The 1st Defendant opposed the application on the grounds that the matter is partly heard and that the parties have filed their respective documents.

13. A Respondent can oppose an application by either filing a replying affidavit or grounds of opposition or both.



14. An objection on a point of law can be raised at any stage of the proceedings. The objection raised by the 1st Defendant is not based on a pure point of law but on facts which can only be proved by way of evidence.
15. The court has a duty to ensure that litigants are afforded an opportunity to ventilate their case. In order to arrive at a just determination of this matter and taking into consideration the explanation offered by the Plaintiff, this court finds and holds that the amendment sought will not prejudice the Defendants in any way. In any event, the Defendants will have an opportunity to amend their pleadings.
16. The upshot of the foregoing is that the application dated 31st October 2023 is merited and the same is allowed in the following terms:-
 1. The Plaintiff is granted leave to amend his Plaint in terms of prayer No. 1 of the application.
 2. The amended Plaint and any other document to be filed and served upon the Defendants within 7 days from the date hereof.
 3. The Defendants are granted corresponding leave to file and serve an amended Defence and any other document from the date of service of the amended Plaint.
 4. The costs of this application shall abide the outcome of the main suit.

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HON. T. MURIGI

JUDGE

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 23RD DAY OF APRIL, 2024.

IN THE PRESENCE OF:

Macharia for the Plaintiff

Kiluva for the 1st Defendant

Mutia for the 2nd Defendant

