



**Muli & others v Kenya Ports Authority & 2 others (Environment & Land
Case 84 of 2002) [2024] KEELC 5613 (KLR) (25 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5613 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 84 OF 2002**

NA MATHEKA, J

JULY 25, 2024

BETWEEN

RAPHAEL MULI & OTHERS PLAINTIFF

AND

KENYA PORTS AUTHORITY 1ST DEFENDANT

MUNICIPAL COUNCIL OF MOMBASA 2ND DEFENDANT

COMMISSIONER OF LANDS 3RD DEFENDANT

RULING

1. The application is dated 14th July 2023 and is brought under Order 8 Rule 3(1), Rule 7 of the Civil Procedure Rules, Section 1A, 1B, 32 34 of the *Civil Procedure Act*, Article 50 and 159 of *the Constitution* seeking the following orders;
 1. This Honourable Court be pleased to grant leave to the Plaintiffs to amend their Plaint so that it aligns with the changes that occurred regarding the property.
 2. In a tentative to 1 above and without any prejudice, the attached draft amended Plaint, Verifying Affidavit to the amended Plaint, list of witnesses, witness statements and bundle of documents be deemed as duly filed.
 3. Cost of this Application be in the cause.
2. It is based on the grounds that some of the facts relating to the suit have changed since it is an old case instituted in 2002 thus the need to update the pleadings to conform to the current status. Further, some of the witnesses testifying in the suit have departed therefore the amendments will reflect on new witness statements that will enable the court determine this suit expeditiously. It is necessary to amend the Plaint in order to present a proper case reflecting on the current status. This will help this Honourable Court resolve the dispute between the parties expeditiously with finality. It is imperative



that the amendments be allowed so that the instant suit is determined on its merits with finality. Unless this Application is heard expeditiously, and the orders sought granted, the Claim herein stands to be defeated for presenting a case anchored on facts partly overtaken by events. That the Applicants have a prima facie case with high chances of success. It is in the interest of justice and on a balance of convenience to award the reliefs sought herein to realize the full determination of this suit.

3. The 1st defendant, opposes the plaintiffs' Notice of Motion Application dated 14th July 2023 on the following grounds that the Application is devoid of merit, incompetent and an abuse of the court process. The amendments sought are not necessary for the just determination of the dispute and questions in controversy. The proposed amendments will reframe the plaintiffs' case. The plaintiffs ought to be restricted to facts at that time of instituting of the suit and no facts arising during the pendency of the suit. There existed interim orders issued by this court on 8th March 2008 restraining the 1st defendants from interfering with the suit property. Any developments thereafter cannot be relied upon as change in facts. The reasons given to amend the Plaintiff are not sufficient for amendment of the Plaintiff. The 1st defendant shall suffer great prejudice and injustice if the Application is allowed. On the grounds and for reasons stated above, the 1st defendant urges this Honourable Court to dismiss the Application with costs.
4. This court has considered the application and the submissions therein. Order 8 Rule 3 of the Civil Procedure Rules provides for amendment of pleadings with leave of court as follows: -
 - (1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, 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.
5. Further, Order 8, rule 5 gives the court the general power to amend.
 - 5(1) 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.
6. The 1st Respondent strongly opposed the application and pointed out that there existed interim orders issued by this court on 8th March 2008 restraining the 1st defendants from interfering with the suit property. Any developments thereafter cannot be relied upon as change in facts.
7. Be that as it may, Section 1A of the [Civil Procedure Act](#) provides for the overriding objective of the [Civil Procedure Act](#) and the rules made thereunder and provides as follows:
 - 1A (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
 - (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
 - (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.
8. Section 1B of the same Act, on the other hand provides for the duty of court and states:
 - (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims —



- (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
 - (e) the use of suitable technology.
9. The proposed amendment the Plaintiff seeks to state that the land is occupied with about 1000 households with an estimated population of over ten thousand people among other averments. That there are various amenities supplied by both central and county governments like tarmacked roads, schools. Hospitals, churches, mosques and other social amenities.
10. In the case of *Central Kenya Ltd vs Trust Bank & 4 Others, CA No. 222 of 1998*, the court stated that, the guiding principle in amendment of pleadings and joinder of parties is that:
- all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”
11. On the issue of amendment of pleadings in the case of *AAT Holdings Limited vs Diamond Shields International Ltd (2014) eKLR*, the court cited the principles as set out by the Court of Appeal in *Central Kenya Ltd Case No. 222 OF 1998* as shown below;
- (i) That are necessary for determining the real question in controversy.
 - (ii) To avoid multiplicity of suits provided there has been no undue delay.
 - (iii) Only where no new or inconsistent cause of action is introduced i.e. if the new cause of action does not arise out of the same facts or substantially the same facts as a cause of action.
 - (iv) That no vested interest or accrued legal rights is affected; and
 - (v) So long as it does not occasion prejudice or injustice to the other side which cannot be properly compensated for in costs.
12. It is quite clear from decided cases that the discretion of a trial court to allow amendments of a Plaintiff is wide and unfettered except it should be exercised judicially upon the foregoing defined principles.
13. Be that as it may, I have also perused the proposed Amended Plaintiff and I find it introduces new facts and parties into this matter. By an application dated 6th March 2002 the Court allowed the application for the plaintiffs authorising Raphael Muli to sue on behalf of all persons interested in the suit. The list of persons attached therein was deemed to be properly on record and suing as plaintiffs through Raphael Muli. I find that the applicant was granted leave to file this suit on behalf of himself and the plaintiffs. In the current proposed amended plaintiff there is no list of who is to be added (from 300 to over 10,000 people) or whether they have been notified. In these circumstances, I find that this contravenes order 1 rule 8 of the Civil Procedure Rules. I find that this application is not merited and is dismissed with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF JULY 2024.



N.A. MATHEKA
JUDGE

