



**Ochoki v Kenya Power & Lighting Company Limited (Environment & Land  
Case E020 of 2022) [2024] KEELC 5462 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5462 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE E020 OF 2022**

**M SILA, J**

**JULY 24, 2024**

**BETWEEN**

**RUTH MORAA OCHOKI ..... PLAINTIFF**

**AND**

**KENYA POWER & LIGHTING COMPANY LIMITED ..... DEFENDANT**

**RULING**

(Application to amend plaint; suit yet to commence; application allowed as there is no prejudice to the defendant)

1. The application before me is that dated 8 April 2024 filed by the plaintiff. It is an application seeking leave to amend the plaint. The application is opposed.
2. The plaint sought to be amended was filed on 19 September 2022. The plaintiff is the administrator of the estate of one Ochoki Mogeni (deceased). It is her case that the deceased was the registered owner of the land parcel Kisii Central Kitutu/Monyerero/20 which came to be registered in his name in 1974. The complaint of the plaintiff is that the defendant erected electricity posts across the land. In the case she wishes to have the defendant permanently restrained from the land, immediate removal of the electricity poles and cables and for the same to be rerouted, mesne profits and interest. The defendant filed a statement of defence which is more or less a denial and claiming that the plaintiff is seeking to fraudulently obtain compensation. There was also a preliminary objection filed that that this court has no jurisdiction. The suit is yet to commence.
3. I can see that through this application the plaintiff wishes to amend the plaint to include a prayer for loss of earnings in the sum of Kshs. 20,000,000/=.
4. The defendant filed grounds of opposition and a replying affidavit to oppose the application. In the grounds of opposition it is averred that the amendment is an afterthought; that there is no justification why the claim was not raised at the outset; that the claim advanced has no support; that there are no



material particulars disclosed; that the amendment is an afterthought and a fishing expedition; that the application is frivolous. The replying affidavit is sworn by Joseph Muchai, a legal officer of the defendant. He states that the court has no jurisdiction to entertain the application because it has no jurisdiction to hear the suit because of the provisions of the *Energy Act, 2019*; and that the dispute should be before the Energy and Petroleum Tribunal. The other issues in the replying affidavit are more or less a repetition of what is raised in the grounds of opposition.

5. I invited counsel to file submissions towards the application and I have seen the submissions filed by both counsel for the applicant and respondent.
6. What is before me is an application for amendment and courts are generally liberal when it comes to such applications. Generally such applications will be allowed unless the other party demonstrates that there will be prejudice to her. In the case of a matter that is yet to commence it is difficult to see what prejudice a defendant would suffer since whatever will be pleaded in the amended plaint can be traversed in the defence or amended defence. In our case I have already pointed out that the case is yet to commence and on my part whatever it is that the plaintiff wishes to now add in the amended plaint, the defendant will have opportunity to controvert. I am not therefore persuaded by the grounds of opposition raised by the defendant. I am aware that among the issues raised is that this court has no jurisdiction. That is not what is before me. What is before me is whether or not to grant leave to the plaintiff to amend the plaint, and as I have said, I see no issue with the amendment. If the defendant wishes to apply for the striking out of the amended suit on the basis that the court has no jurisdiction that is a matter that she can pursue later if she is so minded to do so.
7. I therefore grant leave to the plaintiff to amend the plaint. The amended plaint be filed within the next Seven (7) Days and be served in the usual manner. The defendant is at liberty to amend its defence. The defendant will however have the costs of the application as the plaintiff could very well have pleaded the damages now sought to be included when the plaint was first filed.
8. Orders accordingly.

**DATED AND DELIVERED THIS 24 DAY OF JULY 2024**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

