



Onkeo & 2 others v Embakasi Ranching Co Ltd & 2 others (Environment & Land Case 69 of 2017) [2024] KEELC 6397 (KLR) (26 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6397 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 69 OF 2017
LN MBUGUA, J
SEPTEMBER 26, 2024**

BETWEEN

**ZAKAYO MONYONCHO ONKEO 1ST PLAINTIFF
STEPHEN NYATUKA MONYONCHO 2ND PLAINTIFF
YUNIAH KWAMBOKA MONYONCHO 3RD PLAINTIFF**

AND

**EMBAKASI RANCHING CO LTD 1ST DEFENDANT
ELIZABETH WANJIKU KARUME 2ND DEFENDANT
LUCY MUTHONI KAMAU 3RD DEFENDANT**

RULING

1. The Plaintiffs' Notice of Motion dated 27.1.2024 is for determination. They seek leave to further amend their plaint plus costs. The application is premised on grounds on its face and on the supporting affidavit sworn on 27.1.2024 by Yuniah Kwamboka. She avers that she appointed the firm of Masaki & Gathu to take over conduct of the matter in place of Musyoki Mogaka & co. Advocates LLP. That upon perusal of the file, it has become apparent to her new advocates that for the purpose of determining questions in controversy, it is necessary to further amend the plaint as the plaintiffs are seeking cancellation of certificates of leases fraudulently issued to the 2nd and 3rd defendants.
2. To this end, they intend to enjoin the Registrar of lands who has been omitted as a party and incorporate particulars of fraud in the amended plaint.
3. The application is opposed by the 1st and 2nd Defendants vide the 2nd Defendant's replying affidavit sworn on 5.3.2024 and grounds of opposition of similar date. The defendants contend that the aim of the Plaintiffs is only to delay the matter, which will prejudice them since the Plaintiffs are in occupation



of the suit parcels. The deponent points out that the Plaintiffs have changed advocates thrice on the eve of hearing.

4. That pleadings had closed and the court had granted the Plaintiffs enough time to file any documents by 10.3.2023 thus they should not be allowed to file documents through the backdoor, contrary to this court's ruling of 25.1.2024.
5. In response to the 2nd and 3rd defendants' responses, the plaintiffs filed a supplementary affidavit where they aver that whilst it is true that the court had ruled on the plaintiff's filing additional documents, the question of amendment of pleadings was not dealt with.
6. The application was canvassed by way of written submissions which I have duly considered. I have also considered the history of the file and the import of the ruling delivered on 25.1.2024. The provisions of Order 8 Rule 3 of the Civil Procedure gives this court discretion to amend pleadings, while Order 8, Rule 5 gives the court the general power to amend. In *ELijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] eKLR, the Court of Appeal stated that the function of amendments is to determine the true, substantive merits of a case.
7. In *Rubina Ahmed & 3 Others v Guardian Bank* (sued in its capacity as a successor in the title to First National Bank) [2019] eKLR it was held that:

“...the person applying for amendment must be acting in good faith. Amendment should not be allowed at a late stage of trial if on analysis, it is intended ... to advance a new ground for defence, if the amendment... seeks to repair an omission due to negligence or carelessness. Leave may be granted if the amendment can be made without injustice to the other side.”
8. It is noted that the matter has been in court for the last 7 years. And as pointed out by the defendant, the plaintiffs keep on changing advocates, and they also spring surprise applications for adjournments on the eve of the hearings (i.e see proceedings of 9.6.2022). True, the ruling of 25.1.2024 spoke to further documents and not amendment of pleadings, but it is the finding of this court that allowing the amendments would in essence circumvent the import of the aforementioned ruling.
9. I also find that the defendants stand to be prejudiced by the proposed amendment, as the joinder of new parties and incorporation of new claims will take the file back to where it all begun 7 years ago. In addition, the prayers sought are prejudicial to the overall administration of justice in light of the court's observations made at paragraph 5 and 6 in the ruling dated 25.1.2024.
10. In the circumstances, the application dated 27.1.2024 is hereby dismissed with costs to the 2nd and 3rd defendants.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Omayunu and Ondiuki for plaintiffs

Nyamweya for 2nd & 3rd Defendant/Respondents

M/s Mutua holding brief for Machoris for 1st Defendant

Court assistant: Joan

