



**Kamau & 2 others (Suing as the Administrator of the Estate of
Sammy Kamau Wokabi (DCD)) v Ngugi (Environment & Land Case
E130 of 2021) [2024] KEELC 6625 (KLR) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6625 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E130 OF 2021
MD MWANGI, J
SEPTEMBER 24, 2024**

BETWEEN

**ANTONY NG'ANG'A KAMAU 1ST PLAINTIFF
GRACE WANGARI KAMAU 2ND PLAINTIFF
PETER MUKURIA KAMAU 3RD PLAINTIFF
SUING AS THE ADMINISTRATOR OF THE ESTATE OF SAMMY KAMAU
WOKABI (DCD)**

AND

HANNAH NDUTA NGUGI DEFENDANT

RULING

(In respect of the Plaintiff's application dated 1st October, 2023 brought under Order 8 Rule 3 & 5, Order 2 Rule 13 and Order 51 of the Civil Procedure Rules)

Background

1. The Application for determination before this Court is the Plaintiffs' Notice of Motion dated the 1st October, 2023 expressed to be brought under Order 8 Rule 3 & 5, Order 2 Rule 13 and Order 51 of the Civil Procedure Rules seeking for Orders that: -
 - a. The Applicants be allowed to amend their pleadings as per the draft amended pleadings annexed herewith and that the annexed draft amended pleadings be deemed as duly filed.
 - b. Costs of this Application be in the main cause.
2. The application is premised on the ground that the proposed amendments are necessary to enable the Court determine all the issues in dispute between the parties. The Application is further supported



by the joint Affidavit Antony Ng'ang'a Kamau and Grace Wangari Kamau, the administrators of the Estate of Sammy Kamau Wokabi deposed on the 1st October, 2023. The deponents aver that the subject matters of the suit are Dagoretti/Waithaka/1176, Dagoretti/Waithaka/1177 and Dagoretti/Waithaka/1178 purchased by Sammy Kamau Wokabi from Irungu Gathuri, who are both deceased.

3. The Applicants assert that the Defendant herein is the administrator of the Estate of Gathuri Irungu. They wish that she defends the suit herein in her capacity as the representative of the Estate of Gathuri Irungu. It is for that reason that they seek to amend the pleadings to shed more light into the circumstances surrounding the matter herein and disclose all the information relating to the matter. They argue that the application ought to be granted for the court to have a chance to determine the real issues in question.

Responses by the Defendant

4. The application is opposed by the Defendant vide the grounds of opposition dated 21st November, 2023 and her Replying Affidavit sworn on 27th June, 2024. In her grounds of opposition, the Defendant argues that the application is malicious on the face of it, bad in law and cannot be sustained. Further, that there is no good reason advanced as to why pleadings are being amended. She argues that the application ought to be dismissed with costs to the Respondent.
5. In her Replying Affidavit, the Defendant avers that no good reason has been advanced as to why pleadings ought to be amended. She affirms that she is not a necessary party to this suit. Further that the application by the Plaintiffs is defective for failure to attach annexures thereto. Additionally, no evidence has been adduced confirming the existence of the said parcels. She posits that the Plaintiffs' have no capacity to file this suit.

Court's Directions

6. The court directed that the application be canvassed by way of written submissions. The Plaintiffs filed their submissions dated 9th July, 2024 whereas the Defendant's submissions are dated 9th August, 2024. The Court has had the opportunity to read through and consider the filed submissions as well as arguments raised by the parties' counsel in support of their respective positions.

Issues for Determination

7. In this Court's opinion, the sole issue for determination is whether the Applicants' Notice of Motion for amendment is merited.

Analysis and Determination

8. The law as regards the grant of leave to amend is well settled. Amendments are governed by the provisions of Section 100 of the *Civil Procedure Act*, and Order 8 Rule 3 of the Civil Procedure Rules. The general rule is that amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side; and there is no injustice if the other party can be compensated by costs.
9. A wider footage on the issue was given in the case of *Elijah Kipngeno Arap Bii -vs- Kenya Commercial Bank Limited* [2013] eKLR, where the court of Appeal clearly set out the principles upon which courts may grant leave to amend pleadings. The same is as follows:
 - a. the power of the court to allow amendments is intended to determine the true substantive merits of the case;



- b. the amendments should be timeously applied for;
 - c. the power to so amend can be exercised by the court at any stage of the proceedings (including appeal stage);
 - 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;
 - e. that the proposed amendment must not be immaterial or useless or merely technical;
 - f. that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action;
 - g. that the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts.”
10. The above-mentioned parameters are not exhaustive as far as the grant of leave to amend plaints is concerned. The import is that the court has a very wide berth in granting leave to amend. This position was affirmed in the case of *St. Patrick’s Hill School Limited v Bank of Africa Kenya Limited* [2018] eKLR, cited by the Plaintiff/ Applicant in her submissions.
11. The legal parameters governing the amendment of pleadings from the above cited decisions can be summed up as follows; that the amendment should not introduce new or inconsistent cause of action or issues; the amendment should be made timeously; it should not affect any vested interest or accrued legal right and it should not prejudice or cause injustice to the other party.
12. A perusal of the Draft Amended Plaint in this instance shows that the proposed amendments are intended at suing the Defendant in her capacity as the administrator of the Estate of Gathuri Irungu and the eldest daughter of Irungu Gathuri Irungu. In summary, the facts as proposed are that;
- a. Sammy Kamau Wokabi entered into a Sale Agreement with Irungu Gathuri Irungu on 19th July, 1998 for the purchase of $\frac{1}{2}$ an acre from the property of the deceased Gathuri Irungu (‘the Original Owner’). A Certificate of Confirmation of Grant for the Estate of the Gathuri Irungu was issued on 10th February, 1989. Irungu Gathuri Irungu became the beneficiary of $\frac{1}{4}$ of Dagoretti/Waithaka/156 translating to 2.1 acres of the Original parcel.
 - b. The Plaintiffs aver that upon payment of the purchase price, Irungu Gathuri Irungu gave Sammy Kamau Wokabi possession of his $\frac{1}{2}$ acre in September, 1991, which he settled on and constructed a home where the live to date. Subsequently, a consent by the Land Control Board consent was granted on 4th September, 1991 by Irungu Gathuri Irungu. Unfortunately, the Transfer was not registered due to a caution by Peter Maina Nguni claiming purchaser’s right. Peter Maina filed a suit; CMCC No. 5078 of 1992.
 - c. The Court in the said matter, directed Irungu Gathuri Irungu to refund Peter Maina Nguni the purchase price. To settle the said decretal sums, Irungu Gathuri Irungu agreed to sell to Sammy Kamau Wokabi land measuring a $\frac{1}{4}$ an acre of land and the consideration therein was to settling of the decretal amount. Sammy Kamau paid the decretal amount and took possession of the $\frac{1}{4}$ an acre portion as agreed.
 - d. Unfortunately, the transfer of the properties to Sammy Kamau Wokabi was not effected due to a number of challenges until his demise. That Irungu Gathuri Irungu also tried to have the



original land subdivided to enable him transfer the properties to the estate of Sammy Kamau Wokabi but he also died before effecting the transfer.

- e. That surprisingly, the Defendant is now trying to evict the Estate of Sammy Kamau Wokabi out of suit properties yet they are the rightful owners of the suit property, their deceased father having purchased it from Irungu Gathuri Irungu. They also aver that having been in possession thereon, they are entitled to the property by virtue of the doctrine of adverse possession.
13. I have looked at the draft amended plaint and note that the Applicants' case is that their deceased father purchased a parcel of land from the deceased Irungu Gathuri Irungu who was to inherit it from his Gathuri Irungu, deceased. The estate of Gathuri Irungu was eventually distributed and a certificate of confirmation of grant issued accordingly. However, the property was not subdivided hence the deceased Irungu Gathuri Irungu could not fulfill his part of the bargain to transfer the property to the late Sammy Kamau Wokabi.
14. The Defendant in her submissions contend that the amendment ought to be disallowed and the suit be struck out as the suit was null ab initio. She states that the suit was defective from the start and the Defendant does not understand why she has been sued in her personal capacity yet she is neither the registered owner of the suit property nor the administrator of the Estate of Irungu Gathuri Irungu. She denies being the administrator of the Estate of Gathuri Irungu, her late grandfather.
15. The overriding consideration in an application for leave for amendment is whether the amendments sought are necessary for determining the real question in controversy and whether the delay in bringing the application for amendment is likely to prejudice the opposite party beyond what may be compensated in costs.
16. In the instant suit, I am of the view that once the proposed amendments are made, the Defendant will be at liberty to raise any objections she wishes to. To deny the Plaintiffs the opportunity to amend their suit at this stage would be tantamount to killing the suit before without affording them an opportunity to have their day in court.
17. In any event, the Defendant has not stated and proved any prejudice she is likely to suffer that cannot be compensated by way costs, if the application is allowed. The hearing of the suit is yet to commence and any defence available to the Defendant shall still be open to her as pleadings shall be re-opened.
18. Therefore, in order to determine the real questions in controversy between the parties herein, this court will exercise its discretion and allow the Plaintiffs' application to amend the Plaint as proposed.
19. Accordingly, this court makes the following orders: -
 - a. The Plaintiffs are granted leave to amend their Plaint as proposed.
 - b. The Amended Plaint shall be filed and served within 7 days from the date of this ruling.
 - c. The Defendants are granted corresponding leave to amend, file and serve an amended defense within 14 days from the date of service of the amended plaint.
 - d. The costs of the application shall abide the outcome of the main suit.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF SEPTEMBER, 2024.

M.D. MWANGI



JUDGE

In the virtual presence of:

Ms. Maina for the Plaintiffs/Applicants

N/A by the Defendant/Respondent

Court Assistant: Yvette

M.D. MWANGI

JUDGE

