



**Muriu v Njuhiga (Environment & Land Case 663 of 2012)  
[2024] KEELC 6891 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6891 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 663 OF 2012  
MD MWANGI, J  
OCTOBER 17, 2024**

**BETWEEN**

**ELIZABETH MARY RUGURU MURIU ..... PLAINTIFF**

**AND**

**ROSE NYAMBURA NJUHIGA ..... DEFENDANT**

**RULING**

(In respect of the Plaintiff's application dated 5th July, 2024)

**Background**

1. The Application for determination is the Plaintiffs' Notice of Motion dated on the 19th July, 2024 expressed to be brought under Order 8 Rule 5 and Order 51 Rule 1 of the Civil Procedure Rules, seeking for Orders that: -

The Honourable Court be pleased to enlarge the time within which the Plaintiff/Applicant may be granted leave to amend her Plaintiff.

- a. This Court be pleased to grant the Plaintiff/Applicant, unconditional leave to file her amended Plaintiff annexed to this Application.
  - b. The amended Plaintiff dated 5th July, 2024 be deemed as properly on record and duly filed upon payment of the requisite court fees.
  - c. Costs of this Application be provided for.
2. The application is premised on the grounds on the face of it and is further supported by the Affidavit of Tabitha Muthoni deponed on the 5th July, 2024. The Applicant avers that she instituted the instant suit vide the Plaintiff dated 2nd October, 2012. However, her then Advocate did not articulate pertinent issues against the Defendant. She avers that she has now instructed her current Advocates on record



hence the need to amend the Plaintiff to put all matters in proper perspective before the hearing of the suit. She prays that the court do allow her to amend the Plaintiff as per the annexed Draft. She states that no prejudice will be occasioned to the Defendant herein by reason of the proposed amendments.

### **Responses by the Defendant**

3. The application is opposed by the Defendant vide the grounds of opposition dated 19th July, 2024 and her Replying Affidavit sworn on 22nd July, 2024. In her grounds of opposition; which grounds are reiterated in her Replying Affidavit; the Defendant argues that the application is mischievous having been filed after the case was certified ready for hearing.
4. The Respondent contends that the application lacks merit as the Plaintiff has not shown a specific and sustainable ground for amendment of the Plaintiff at this stage. She asserts that the Applicant has added over 10 new paragraphs which were not in the original Plaintiff. She avers that the additional paragraphs raise new facts meant to correct and contradict the issues she raised in her Defence thus prejudicing her case. Further, that the delay is for a cumulative period of over 7 years. It is inordinate and inexcusable yet no credible reason has been given to explain the inaction.
5. She accuses the Plaintiff of deliberately failing or neglecting to file a reply to her Defence. The intended amendment of the Plaintiff is in reply to the issues raised in the statement of Defence and Counterclaim. The delay in hearing the suit is prejudicial to her as she has been staying in a rented house in compliance with an order that was obtained by the Plaintiff through misrepresentation and false information. She therefore prays that the application be dismissed with costs.

### **Court's Direction**

6. The court directed parties to canvass the application by way of written submissions. The Plaintiff filed their submissions dated 5th July, 2024 whereas the Defendant's submissions are dated 31st July, 2024. The Court has had the opportunity to read through the filed submissions which now form part of the court record.

### **Issues for Determination**

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

### **Analysis and Determination**

8. The grant of leave to amend pleadings is a discretionary power donated by the Civil Procedure Rules under Order 8. In particular, Order 8 Rule 3(1) provides: -

“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”

9. On the other hand, Order 8 rule 5 (1) provides: -

“For the purpose of determining the real question in controversy between the parties, or 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.”



10. The above provisions do not place time restrictions within which an amendment to a pleading should be made. In fact, Order 8 Rule 3 (1) uses the phrase ‘at any time of the proceedings’.
11. For this reason, it is considered trite law that amendments to pleadings should be freely allowed at any time before the delivery of a judgment. In this regard, Mulla in *The Code of Civil Procedure*, 17<sup>th</sup> Edition Volume 2, at pages 333, 334 and 335 observes that as a general rule, leave to amend will be granted so as to enable the real question in issue between the parties to be raised on the pleadings where the amendment will occasion no injury to the opposite party, except such as can be sufficiently compensated for by costs or other terms to be imposed by the order.
12. In *Beatrice Gikunda vs CFC Life Assurance Limited* [2020] eKLR, the court observed that leave to amend must always be granted unless the party applying is acting mala fide and where it is not necessary for determining the real question in controversy between the parties.
13. In *Abdul Karim Khan vs Mohamed Roshan* (1965) EA.289 (C.A), the court expressed the opinion that courts will not permit an amendment that is inconsistent with the original pleading and entirely alters the nature of the Defence or Pleint.
14. 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, 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. power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages);
  - 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.”
15. The above-mentioned parameters are not exhaustive as far as the grant of leave to amend pleadings is concerned. What that means is that the court has a wide berth in granting leave to amend. This position was restated 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.
16. 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(s) or issue(s); 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.
17. A perusal of the Draft Amended Pleint shows that the proposed amendments are clearly underlined in red contrary to the Defendant’s allegations that the proposed amendments are not marked. Further,



I do not see how the above amendments will in any way prejudice the Defendant and or result in any injustice. Moreover, whereas there has been no sufficient explanation given for the delay in filing of the application for leave to amend the Plaintiff, I am guided by the decision in *Central Kenya Limited v Trust Bank Limited* [2000] 2 EA 365, where the court stated that mere delay is not a ground for declining leave to amend, unless such delay is one likely to prejudice the other party beyond monetary compensation.

18. In this particular case, I am of the view that there is no prejudice that will be occasioned to the Defendant. If any, it may be compensated by an award for costs.
19. Furthermore, if the application for amendment is allowed, the Defendant will have the opportunity to respond to the amendments if she so wishes.
20. From the foregoing, I find that the Plaintiff has demonstrated a good case for an amendment of pleadings and that no prejudice will be suffered by the Defendant if the application is allowed.
21. Accordingly, the application dated the 5th July, 2024 is allowed on the following terms: -
  - a. That the amended plaintiff be filed and served within twenty-one (21) days from the date of this ruling.
  - b. That the Defendants is granted leave to file an Amended Defence within twenty-one (21) days of service of the amended plaintiff, if need be.
  - c. The costs of this application shall be in the cause.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF OCTOBER, 2024.**

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Mr. Waweru for the Plaintiff/Applicant

N/A by the Defendant

Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE**

