



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Al Ariba Limited v Mbaabu & 6 others (Environment & Land Case  
153 of 2017) [2023] KEELC 548 (KLR) (30 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 548 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 153 OF 2017  
FM NJOROGE, J  
JANUARY 30, 2023**

**BETWEEN**

**AL Ariba LIMITED ..... PLAINTIFF**

**AND**

**SAMMY MUREITHI MBAABU ..... 1<sup>ST</sup> DEFENDANT**

**SOYONIN FARM COMPANY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**DYNASTY INTERNATIONAL LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**CEM-BERG INTERNATIONAL LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**KENYA COMMERCIAL BANK ..... 5<sup>TH</sup> DEFENDANT**

**SUSAN M NABULINDO ..... 6<sup>TH</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR NAKURU ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

1. Ms Wanjeri State Counsel, appearing for the 6<sup>th</sup> and 7<sup>th</sup> defendants has indicated that she is applying for the defence filed in this matter to be amended to apply to the 6<sup>th</sup> defendant. Currently the defence as drafted is only for the 7<sup>th</sup> defendant. Mr Ochang's stand is that the defence filed for the 7<sup>th</sup> defendant cannot be made to apply to the 6<sup>th</sup> defendant because it is particularly for the 7<sup>th</sup> defendant and its body states as much. He states there appears to have been no intention to file it on behalf of the 6<sup>th</sup> defendant and the latter therefore has not defended the claim before this court.
2. It is Mr Ochang's position that the 6<sup>th</sup> defendant was sued in her personal capacity and the particulars of fraud were levelled against her in her personal capacity.



3. The plaint filed in this case does not describe her to be sued in her personal capacity. It only states as follows:

“7: The 6<sup>th</sup> defendant is a female adult of sound mind working at Nairobi.”

4. Save at paragraph 22, the 6<sup>th</sup> defendant is omitted from the statements made in that pleading.
5. At paragraph 23 the plaint states that all the defendants (save the 5<sup>th</sup>) jointly and severally conspired to defraud the plaintiff of its rightful ownership of the suit property. Particulars of fraud are levelled against the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants.
6. There are no particulars against the 3<sup>rd</sup> and the 5<sup>th</sup> defendants. No prayers are sought specifically against the 6<sup>th</sup> defendant too. However, the main question that remains outstanding is whether the present defence may be amended to include the 6<sup>th</sup> defendant as applied for orally by Ms Wanjeri today.
7. I have noted that the memorandum of appearance filed by the Attorney General on 17/7/2017 is for both the 6<sup>th</sup> and the 7<sup>th</sup> defendants. The notice of preliminary objection filed by Mr Kiprotich Kirui State Counsel on 25/9/2017 is also for both the 6<sup>th</sup> and 7<sup>th</sup> defendants. The record of proceedings shows the Attorney General has represented both defendants on each occasion when it came up in court.
8. Substituted service was only made to the 1<sup>st</sup> – 4<sup>th</sup> defendants in the suit. Mr Ochang has not shown to me any Affidavit of service stating that Susan Nabulindo was served with the summons in the suit in her personal capacity and I therefore am of great doubt that she was joined to the suit in her personal capacity.
9. Ordinarily, when servants of the Government are joined to a suit in any capacity other than official, it behoves the claimant to plead specifically that they are being so joined so that they may raise their own defence. Before me is a plaint that never pleaded those specifics and the suit appears to have proceeded to hearing on the assumption that, as stated in the memorandum of appearance, the Attorney General appears for the 6<sup>th</sup> and 7<sup>th</sup> defendants. Ms Wanjeri’s comment that there must have been some inadvertence in the omission to state that the defence included the 6<sup>th</sup> defendant must therefore be taken to be correct.
10. That said, can she be allowed to make an oral application for amendment and orally amend while so many paragraphs require to be amended to reflect a pleading worthy of being called the 6<sup>th</sup> defendant’s defence? I think not. I however note that save the intent to change the expressions referring to the 7<sup>th</sup> defendant to reflect the “6<sup>th</sup> and 7<sup>th</sup> defendants” and the corresponding prepositional corrections there is nothing else proposed to be amended in the defence, and the factual statements would therefore remain the same. In view of what the plaint currently reads, I hardly think that the plaintiff would be prejudiced by any amendment of that nature.
11. Consequently, I must allow the application partially by allowing her time to amend the defence dated 29/3/2021 to read that it included the 6<sup>th</sup> defendant and, after that, serve all the other parties and I therefore issue those orders accordingly.
12. The amended defence shall be filed and served within 3 days from today and parties shall appear before this court on 9/2/2023 for a mention to fix a hearing date on a priority basis.

**DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 30<sup>TH</sup> DAY OF JANUARY, 2023**

**MWANGI NJOROGE**



JUDGE, ELC, NAKURU

