



**Talent Academy Limited v Kenya National Highways Authority & 3 others (Environment & Land Case 879 of 2013) [2023] KEELC 131 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 131 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 879 OF 2013  
EK WABWOTO, J  
JANUARY 19, 2023**

**BETWEEN**

**TALENT ACADEMY LIMITED ..... PLAINTIFF**

**AND**

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... 1<sup>ST</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is in respect to an application dated November 11, 2022 accompanied by a Supporting Affidavit sworn by Milcah Muendo. The application seeks the following orders:
  - i. That leave be granted to the 3<sup>rd</sup> and 4<sup>th</sup> defendant to amend its statement of defence dated May 12, 2021 and introduce counterclaim out of time.
  - ii. That Parties be granted leave to amend their pleadings out of time.
  - iii. That the court do issue direction on further hearing of the matter.
  - iv. That costs of this application be in the cause.
2. The application was supported on the grounds on its face. The suit came up for hearing on March 16, 2022 where an application for a site visit was made and subsequently allowed. On November 9, 2022, the site visit was conducted and the suit was set for further hearing on November 10, 2022.
3. In their submissions dated November 11, 2022, the 3<sup>rd</sup> and 4<sup>th</sup> Defendants submitted that the application was not frivolous since the amendments were in line with the cause of action in respect



to the suit property. Relying on the cases of *Permanent Secretary Ministry of Roads & another v Fleur Investments Limited* [2016] eKLR and *Republic vs District Land Registrar, Uasin-Gishu & Anor* (2014) eKLR, it was submitted that it would be in the interest of justice to allow the amendments since it would not introduce a new cause of action. Moreover, it was emphasized that amendment of pleadings would not prejudice the Plaintiff as they would be given the opportunity to respond accordingly.

4. The application was strongly opposed by the Plaintiff. In the Plaintiff's submissions dated November 22, 2022, it was argued that the Applicants are seeking to introduce a new cause of action which would be time-barred since the transaction in question occurred about 30 years ago. Relying on the case of *Central Kenya Limited v Trust Bank Limited* (2000)2 EA 365 and *Garley Enterprises Ltd v Agricultural Finance Limited & Another* [2018] eKLR it was submitted that the Applicants have failed to demonstrate why there had been a substantial delay in making the application.
5. Having considered the rival submissions in respect to the application, court proceedings and supporting documents filed herein, it is evident that the issue for determination before this Court is whether the 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Applicants should be granted leave to amend their pleadings.
6. Order 8 Rule 3 of the *Civil Procedure Rules* provides for amendment of pleadings with leave of court as follows: -

- (1) 1) 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.

7. Further, Order 8, rule 5 gives the Court the general power to amend.

5.

- (1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of 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.

8. In *Halsbury's Laws of England*, 4th Ed (re-issue), Vol 36(1) at paragraph 76, state the following about amendments of pleadings: -

“.... The person applying for amendment must be acting in good faith. Amendment will not be allowed at a late stage of the trial if on analysis of it is intended for the first time thereby to advance a new ground of defence. If the amendment for which leave is asked seeks to repair an omission due to negligence or carelessness, leave to amend may be granted if the amendment can be made without injustice to the other side...”[Emphasis Mine].

9. The Court of Appeal reiterated the principles governing amendment of pleadings in *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] eKLR as follows: -

“...The powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); 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; that the proposed amendment must not be immaterial or useless or merely technical; 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; 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. In *Institute For Social Accountability & another v Parliament of Kenya & 3 others* [2014] eKLR the court held:-

"...The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings....The court will normally allow parties to make such amendments as may be necessary for determining the real questions in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, no new or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that the amendment can be allowed without an injustice to the other side." [Emphasis Mine]

11. It is of paramount importance that this Court exercises its discretionary powers to ensure parties are not prejudiced in their pursuit for justice. My perusal of the court proceedings confirms that over the past 3 years, the Court has extended itself in allowing the Parties to file additional documents and amendments of their pleadings on several instances. For instance, on April 14, 2021, the Defendants sought for more time to be allowed to file an amended defence and additional documents, which request was granted. Additionally, on October 21, 2021, the Defendants were collectively granted 21 days to file additional documents.
12. Furthermore, I must pronounce myself on whether the application has been brought in a timeous manner and in good faith. This application was brought after the site visit had been undertaken and the Plaintiff's witnesses had testified. In my view, not only would the proposed amendment be prejudicial to the Plaintiff but also seeks to increase the length of the judicial process for the determination of the suit herein.
13. With regard to the question of good faith, parties have participated in pre-trial conference on three separate occasions, where the Defendants were present and confirmed they were ready to proceed before the hearing finally commenced. Indeed, this application has been brought quite late in the day and the potential inconveniences caused cannot be cured by costs.
14. In the foregoing, the Court finds that the Application dated November 11, 2022 is unmerited and the same is hereby dismissed with no orders as to costs.
15. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19<sup>TH</sup> DAY OF JANUARY 2023**

**E. K. WABWOTO**

**JUDGE**

**In the presence of: -**

**N/A for the Plaintiff.**



**N/A for the 1<sup>st</sup> Defendant.**

**N/A for the 2<sup>nd</sup> Defendant.**

**Mr. Motari for the 3<sup>rd</sup> and 4<sup>th</sup> Defendants.**

**Court Assistant; Caroline Nafuna.**

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