



Mate v Ethics and Anti-Corruption Commission & another (Environment & Land Case 3 of 2019) [2023] KEELC 16934 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16934 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 3 OF 2019**

**JO OLOLA, J
APRIL 27, 2023**

BETWEEN

EPHANTUS MABU MATE PLAINTIFF

AND

ETHICS AND ANTI-CORRUPTION COMMISSION 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

RULING

1. By the Notice of Motion dated and filed herein on July 21, 2022, the Ethics and Anti-Corruption Commission (the 1st Defendant/Applicant) prays for orders:
 1. That the 1st Defendant/Applicant be granted leave to amend its Statement of Defence and Counter Claim in the manner set out in the Amended Statement of Defence and Counter Claim annexed to the application and marked “BWK-1”;
 2. That subject to the outcome of prayer (1) above, the amended statement of defence and counter claim annexed to the application and marked BWK – 1 be deemed to be duly filed and served on the plaintiff/respondent, upon payment of the requisite court filing fees;
 3. That subject to the outcome of prayer (1) above, this honourable court be pleased to order that the amended statement of defence and counter claim be served upon the persons the 1st defendant/applicant seeks to join to this suit through the application, namely, Irene Chebet and Wilson Gachanja, within fifteen (15) days or such time as the Court may deem fit in the circumstances of this case;



4. That subject to the outcome of Prayer (1) and (3) above, the Honourable Court be pleased to order that the persons intended to be joined in this suit through this application namely Irene Chebet and Wilson Gachanja do enter appearance and file their respective Statements of Defence to the 1st Defendant's Statement of Defence and Counter Claim within fifteen (15) days of service or such time as the Court may deem fit in the circumstances of this case; and
 5. That this Honourable Court be pleased to issue such other orders as may be fit and justifiable in the circumstances of this case.
2. The application which is supported by an Affidavit sworn by the Applicant's Advocate on record Benson Wambua Kyeli is premised on the grounds:
- (i) That the intended amendment is meant to join to the suit persons of interest in the suit;
 - (ii) That the persons intended to be enjoined are necessary parties to the suit in that Irene Chebet was the 1st allottee of the suit property while Wilson Gachanja was the one who made the allocation;
 - (iii) That the intended amendment will assist the Court to fairly and effectually adjudicate all the issues raised in the 1st Defendant's Defence and Counter Claim; and
 - (vi) That it is in the interest of justice and also in the public interest that the application be allowed.
3. Ephantus Mabu Mate (the Plaintiff) is opposed to the application on the single ground that the application is bad in law and an abuse of the Court process.
4. I have carefully perused and considered both the 1st Defendant's application as well as the response thereto by the Plaintiff. I have similarly perused and considered the written submissions and authorities placed before me by the Learned Advocates representing the Parties herein.
5. By the application before me, the 1st Defendant prays for leave to amend its Statement of Defence and Counter Claim and to enjoin two parties it considers necessary for the fair and effectual determination of the issues in dispute.
6. Order 8 Rule 3 of the [Civil Procedure Rules](#) provides for amendment of pleadings with leave of the Court as follows:
- “(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. Order 8 Rule 5 further gives the Court the general power to allow amendments as follows:
- “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. As was stated in the [*Institute for Social Accountability & Another v Parliament of Kenya & 3 Others*](#) [2014] eKLR:

“The object of amendment of pleadings is to enable the Parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of facts which the Parties really and finally intend to rely on. 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 the 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.”

9. In the matter before me, the Plaintiff/Respondent instituted this suit seeking the removal of a restriction that was registered on the land parcel Number Nyeri Municipality Block 1/1088 at the instance of the 1st Defendant/Applicant. Upon being served with the Summons to Enter Appearance, the Applicant filed a Statement of Defence and Counter Claim dated August 7, 2019.

10. By the said Counter Claim the Applicant inter alia seeks to recover the suit property on the grounds that it constitutes public property that was irregularly acquired and unlawfully alienated to private individuals. From a perusal of the Supporting Affidavit to the application before me, it was apparent that by this application, the 1st Defendant is seeking to enjoin the initial actors said to have perpetrated the alleged irregular and unlawful alienation of the suit property.

11. Under Order 1 Rule 10(2) of the [*Civil Procedure Rules*](#), the Court is granted discretionary powers to order joinder of parties as follows:

“(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

12. I have looked at the intended amendments herein. While the same have come slightly late in the day after the Plaintiff testified and closed its case, it was clear to me that their intent and purpose is to fulfil the requirements of natural justice by ensuring that the persons said to have engaged in the alleged initial alienation of the land are not condemned unheard. The amendments sought to be introduced in the Counter Claim are not foreign or inconsistent with the subsisting cause of action which is centered on the alleged illegal or unlawful alienation of what is said to have hitherto been public land.

13. In the circumstances, I am persuaded that there is merit in the Motion dated July 21, 2022. Accordingly I allow the same in the following terms:



- (i) The 1st Defendant/Applicant is hereby granted leave to amend its Statement of Defence and Counter Claim in the manner set out in the Amended Statement of Defence and Counter Claim annexed to its application.
- (ii) The draft Amended Statement of Defence and Counter Claim be and is hereby deemed to be duly filed and served upon payment of the requisite Court fees within 14 days from the date hereof;
- (iii) The amended statement of defence and counter claim be served upon the persons sought to be enjoined to the suit within 30 days from the date hereof;
- (iv) The persons sought to be enjoined in the suit, namely, Irene Chebet and Wilson Gachanja have 21 days from the date of service to enter appearance and file their respective statements of defence to the 1st defendant's statement of defence and counter claim;
- (v) The plaintiff is at liberty to file an amended defence to the 1st defendant's amended defence and counter claim, if need be, within 21 days from the date hereof; and
- (vi) This matter shall be mentioned for further directions on June 12, 2023.

Ruling dated, signed and delivered in open Court and virtually at Nyeri this 27th day of April, 2023.

In the presence of:

Mr. Kyeli for the 1st Defendant/Applicant

Ms Maina for the Plaintiff/Respondent

Court assistant - Kendi

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J. O. Olola

JUDGE

