



Mukuha & another v County Government of Nakuru & 6 others (Environment & Land Case E007 of 2024) [2025] KEELC 1436 (KLR) (Environment and Land) (20 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1436 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT & LAND CASE E007 OF 2024**

**MC OUNDO, J
MARCH 20, 2025**

BETWEEN

LINNET WAIRIMU MUKUHA 1ST PLAINTIFF

GRACE WAMBUI MUKUHA 2ND PLAINTIFF

AND

COUNTY GOVERNMENT OF NAKURU 1ST DEFENDANT

PHARIS NDUNGU CHEGE 2ND DEFENDANT

GURSHARN SINGH 3RD DEFENDANT

CHIEF LAND REGISTRAR, NAIVASHA LAND REGISTRY ... 4TH DEFENDANT

NAIVASHA INDUSTRIAL COMPLEX LTD 5TH DEFENDANT

NATIONAL LAND COMMISSION 6TH DEFENDANT

ATTORNEY GENERAL 7TH DEFENDANT

RULING

1. Coming up for determination is a Notice of Motion Application dated 9th October, 2024 brought under the provisions of Order 1 Rules 3 and 10 of the Civil Procedure Rules, Order 8 Rules 2, 3 and 4 of the Civil Procedure Rules, Section 1A, 1B, 3, 3A, 99 and 100 of the *Civil Procedure Act*, Articles 10, 27, 47, 48, 50(1) and 159(2)(d) of the *Constitution* and inherent jurisdiction of the court wherein the Plaintiffs/Applicants have sought for the honorable court to vary and/or adjust its orders made on the 12th May 2023, and include Lucy Wanjiru Nyaga whose name had been struck out, as a 3rd Plaintiff because she is a principle/necessary party in the proceedings and/or suit and therein after, the Plaintiffs/Applicants be granted leave to further amend their Plaint to include the 3rd Plaintiff.



2. Lastly they sought for cost of the application to abide the outcome of the suit herein and any further orders as the honorable court may deem fit and expedient to grant.
3. The said application was supported by the grounds therein as well as the supporting Affidavit of an even date, sworn by Linet Wairimu Mukuha, the 1st Plaintiff/Applicant herein who deponed that after the court had struck out the 3rd Plaintiff, Lucy Wanjiru Nyaga, as a party to the proceedings on 12th May 2023, new facts had since emerged wherein it had become apparent that she was indeed a necessary and principal party in the present matter more so since she was the legal administratrix of the estate of Joseph Nyaga Wambiti and therefore was in a position to shed light in relation to the sale of the suit property to and in favour of the Plaintiffs/Applicants herein.
4. That pursuant to the provisions of Article 159 (2) (d) of the *Constitution*, the court was obligated to administer justice without undue regard to procedural technicalities. That the orders herein sought would not prejudice the Respondents/Defendants.
5. Whereas the 1st Defendant/Respondent did not oppose the Application and the 2nd, 4th, 6th and 7th Defendants/Respondents did not participate in the same, the application was however opposed by 3rd and 5th Respondents vide their Grounds of Opposition dated 11th November, 2024 to the effect that it was bad in law, fatally incompetent, vexatious and an abuse of the court process whereby it was meant to further stall and frustrate the expeditious trial of the matter. That the Plaint had been amended multiple times at the instance of the Plaintiffs, wherein the present application was another desperate fishing expedition by the Plaintiffs. Lastly that intended 3rd Plaintiff, Lucy Wanjiku Nyaga (purportedly acting as the administrator of the estate of Joseph Nyaga Wambiti) had been struck out at the instance of the Plaintiffs, and she had no locus standi herein. They sought for the striking out and/or dismissal of the application.
6. The application was disposed of by way of written submissions wherein the Applicants' framed one issue for determination to wit; whether the court should allow the application for amendment of the Plaint.
7. After a summary of the background giving rise to the application, reliance was placed on the provisions of Section 100 of the *Civil Procedure Act* and Order 8 Rule 3 of the Civil Procedure Rules to submit that whereas parties to a suit had a right to amend their pleadings at any stage of the proceedings, the said right was not absolute for it was discretionary and which discretion was to be exercised judiciously inline with the criteria set out in the aforementioned provisions. Further reliance was placed in the decided case of *General Manager E AR & HA & Thierstein (1968) 1 EA 354 (HCK)* as well as the provisions of Order 8 rule 5 of the Civil Procedure Rules.
8. It was their submission that the court had the power to amend pleadings which power could be exercised at any stage of the proceedings before judgement. Reliance was placed in *Bullen and Leake & Jacob's Precedents of Pleadings, 12th Edition* and *Halsbury's Laws of England, 4th Ed. 9re-issue*, Vol. 36(10 at paragraph 76 and the decided case of *Central Kenya Limited v Trust Bank Limited (2000) EA 365* to submit that the amendment sought would enable the court to determine the real issues in controversy.
9. That the 3rd Plaintiff herein, had been struck out as a result of a fraudulent application for amendment of pleadings that had been done without the Plaintiffs' consent/and or knowledge and therefore the Applicants were seeking for leave to amend their Plaint so as to reinstate a necessary party.
10. That the 3rd and 5th Respondents had not shown the prejudice that the amendment would cause them were the amendment allowed. On the other hand, the Plaintiffs stood to be greatly prejudiced were



the suit left to proceed without the key and important party who had wrongfully and fraudulently been struck out. That they had raised sufficient grounds for the grant of the orders sought in their application which was coupled with supporting documents thereof.

11. The 3rd and 5th Defendants, in opposition of the Plaintiffs' Application submitted that Lucy Wanjiku Nyaga had initially been a party to the instant suit wherein the Applicants had sought for her to be struck out for reasons that she did not have a direct or material interest in the subject matter of the suit.
12. That indeed, the Plaintiffs' counsel had taken a contradicting position since whereas the firm of Muthuri Riungu & Co. Advocates had filed a Supplementary Affidavit dated 6th November, 2024 and Submissions dated 20th January 2025 in support of the instant Application, MMO Advocates & G.N Kimani & Co. Advocates who had been acting on behalf on the Plaintiffs alongside Muthuri Riungu had filed a Replying Affidavit dated 11th November, 2024 opposing the instant application and seeking its dismissal with costs while asserting that the same had been an afterthought and was intended to delay the expeditious hearing and determination of the suit.
13. That the glaring inconsistencies by the Plaintiffs had amounted to an abuse of the court process since the court could not countenance a situation where a party simultaneously prosecutes and opposes its own application. That such conduct was not only misleading but also indicative of a calculated attempt to manipulate the judicial process for ulterior motives.
14. That earlier, vide a Notice of Motion dated 13th March, 2018, the Plaintiffs herein had sought to amend their Plaint to join the intended 3rd Plaintiff wherein pursuant obtaining leave of the court, on 12th May 2023, the intended 3rd Plaintiff herein had subsequently been struck out. That the current Application sought to reinstate her yet again in a clear pattern of inconsistent litigation conduct.
15. That whereas in their written submissions dated 20th January, 2025 the Plaintiff while referring to the previous Application for amendment dated 17th April 2023, had casually suggested that the application to amend the pleadings and strike out the 3rd Plaintiff out of the suit had been made fraudulently and without their knowledge and consent. That it was imperative to note that the amendment that had been sought therein had primarily been for the introduction of additional Defendants and claims. That the Plaintiffs had specifically sought leave to file a further amended Plaint to implead new parties and raise additional causes of action that they had deemed essential to the determination of the issues in controversy. That indeed, the 5th Defendant herein had been among the parties whom the Plaintiff had sought to enjoin.
16. That it was thus disingenuous for the Plaintiffs herein to claim that the previous amendment had been made fraudulently and without their knowledge given that the said amendment had been sought at their own instance and for their benefit. That subsequently, the Plaintiffs could not selectively accept portions of the amendment that suited them and disown the ones that no longer served their interests because that was abuse of the court process. They placed reliance in the decided case of John Ochieng & 2 others Trading as Aquiline Agencies v First National Bank of Chicago [1995] eKLR to urge the court to investigate the intent and purpose of the proposed amendment in order to satisfy itself that the same was not immaterial, useless or merely technical.
17. That further, the proposed amendment fell outside the purview of Section 100 of the [Civil Procedure Act](#), Order 1 Rule 10 and Order 8 of the Civil procedure Rules since the Plaintiffs' Application was bad in law and an abuse of the court process. Reliance was placed in the Court of Appeal's decision in Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR where the court had cited the Court of Appeal of Nigeria in the case of Attahiro vs Bagundo 1998 3 NWLL pt 545 page 656 on the meaning of 'abuse of court process,' to submit that the instant Application was an



abuse of the court process having been brought 8 years after the suit was instituted. That were the same to be allowed, it would be the 4th time the Plaintiffs would have amended their Plaint. That secondly, in blatant abuse of the court process and wastage of precious judicial time, the Plaintiffs had previously sought leave to introduce the intended 3rd Plaintiff to the proceedings wherein they had sought leave to strike out her name, only for them to now seek her re-inclusion.

18. It was thus their submission that in allowing the requested amendment, the Court would be facilitating abuse of its process. Reliance was placed in the decided case of *Kassam v Bank of Baroda (Kenya) Ltd [2002] eKLR*. That the power of amendment is to be most carefully and jealously exercised, to prevent parties from turning their case into a gamble, at the expense of the opposing party. That the repeated amendments sought by the Plaintiffs had reflected an intention to manipulate the proceedings rather than advance a legitimate legal cause. The fact that the Plaintiffs had sought for an adjournment for purposes of amending the pleadings on 14th October, 2024 when the matter was ready to proceed for hearing, showed that the instant application served no substantive purpose other than to delay the resolution of the suit.
19. That the Plaintiffs had remained in occupation of the 2nd Defendant's parcel of land which was why they had continued to delay in prosecuting the instant matter and to unjustly deprive the 2nd Defendant of its proprietary rights. That costs alone could not compensate the Defendant for the prejudice suffered. That in any case, the intended 3rd Plaintiff had not advanced any legitimate cause of action in the instant suit thus the Plaintiffs' Application to amend their pleadings appeared to be aimed solely at filling gaps in their case, which had reflected a pattern of delaying tactics at the expense of the Defendants who had been massively prejudiced not only by the institution of the suit herein but also by the amount of time it had taken to prosecute it. That the Defendants were entitled to as much protection by the court as the Plaintiff for which the court should reject the Plaintiffs' Application with costs.

Determination.

20. I have considered the Application herein as well as the Replying Affidavit and the submission by Counsel for the Applicant and 3rd and 5th Respondents respectively. herein. I note that the present application seeks for the court to vary and/or adjust its orders made on the 12th May, 2023, and include M/S Lucy Wanjiru Nyaga whose name had been struck out, as a 3rd Plaintiff as she is a principle/necessary party in the proceedings and/or suit and that therein after, the Applicants herein be granted leave to further amend their Plaint to include the 3rd Plaintiff.
21. Looking at the proceedings herein, the said 3rd Plaintiff was joined to the proceedings pursuant to an application dated the 13th March 2018 which was allowed vide a ruling of 30th April 2019.
22. In an application dated the 17th April 2023, the Applicant had sought for the following orders;
 - a. Spent
 - b. Spent
 - c. The honorable court be pleased to grant leave to the plaintiffs/applicants to file a further amended plaint with a view to introducing and impleading additional defendants as well as additional causes of action/reliefs, which are pertinent to the determination of all the issues in controversy over and in respect of the subject matter.
 - d. Consequent to prayer (3) above, the draft further amended plaint annexed herewith be deemed as duly filed upon payment of the requisite court fees.



- e. Further in the alternative and without prejudice to prayer (4) herein the plaintiffs/applicants be at liberty to file a further amended plaint and same be filed within 14 days from the date of issuance of the leave or such other shorter period as the honorable court may decree and/or direct.
 - f. The honorable court be pleased to grant corresponding leave and/or liberty to the defendants/respondents to file amended/further amended statement of defense, if any and same to be filed and served within 14 days from the date of service of the further amended plaint or such shorter duration as the honorable court may deem fit, just and expedient.
 - g. Pursuant to the grant of leave, details in terms of the preceding paragraph, the honorable court be pleased to grant liberty to the plaintiffs/applicants and the defendants/respondents, leave to file further bundle of documents and witness statements, if any within a set and circumscribed timeline.
 - h. The honorable court be pleased to revert the matter to case conference and enable the parties to confirm due compliance.
 - i. The costs of the application do abide the cause.
 - j. The honorable court be pleased to grant such further and/or other orders as maybe deemed fit, just and expedient.
23. In support of the application, vide a sworn affidavit of an equal date at paragraph 17, the deponent had deponed as follows:
- “That consequently there is need also to also implead additional parties, including M/ S Naivasha Industrial Complex Ltd, National Land Commission and the Honorable Attorney General, respectively.’
24. It is clear from the above application, that the Applicants had sought to further amend their Plaint to include Naivasha Industrial Complex Ltd, the National Land Commission, and the Honorable Attorney General as Defendants.
25. Vide a ruling of 6th June 2023, the court had allowed the Applicant’s application dated 17th April 2023 in terms of prayers no. (c), (e), (f), (g) (h) and (i)
26. In the Application before me, both the Applicants and the Respondents have alluded to an order of 12th May 2023 that supposedly struck off the intended 3rd Plaintiff from the proceedings herein. I have painstakingly perused the proceedings herein and I do not find the existence of such an order. What is on record is that on the 9th May 2023 directions were taken for the disposal of the application dated the 17th April 2023 through written submissions wherein a ruling (herein above captured) was to be delivered on the 6th of June 2023. The next proceedings were held on the 29th January 2024.
27. Section 80 of the [Civil Procedure Act](#) gives the court unfettered discretion to review its decision as follows: -
- “ Any person who considers himself aggrieved—
- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or



- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”

28. Order 45 Rule 1(1) of the Civil Procedure Rules, 2010 sets out the grounds for review and provides as follows: -

“(1) Any person considering himself aggrieved—

- a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

29. The above provisions of the law clearly confer upon the Court an unlimited discretion to set aside or vary a ‘decree or order. These provisions of the law clearly refer to varying a decree or order of the court from which an appeal lies. It would then follow that if there existed no such decree or order in the proceeding, then this Court cannot issue an order to vary its order in vain where the in the proceedings such order is non-existent. Whereas the court is aware of the implications of the provisions of Section 100 of the Civil Procedure Act and Order 8 Rule 5 (1) of the Civil Procedure Rules in that amendment of pleadings is permitted at any stage of the proceedings in order for the court to determine the real issues in controversy and that the granting of the said orders is discretionary and must be exercised judiciously, yet in the same breath the court also takes cognizance that Courts do not, and ought not to act in vain by making futile orders.

30. In the end I find that since there had been no orders striking out Lucy Wanjiru Nyaga as a 3rd Plaintiff, and that she still remains as such, the application before me dated the dated October 9, 2024 lacks merit and the same is herein dismissed with costs.

DATED AND DELIVERED VIA TEAMS MICROSOFT AT NAIVASHA THIS 20TH DAY OF MARCH 2025.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE,

NAIVASHA

