



REPUBLIC OF KENYA



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

**Mwangi & another v Nairobi City County & 2 others (Petition
1 of 2023) [2025] KEELC 1462 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1462 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
PETITION 1 OF 2023
JG KEMEI, J
MARCH 20, 2025

BETWEEN

ESTHER KABURA MWANGI 1ST PETITIONER

BHANU MATTI S KHALIL 2ND PETITIONER

AND

THE NAIROBI CITY COUNTY 1ST RESPONDENT

PREMIUM BRAND INVESTMENT COMPANY LIMITED ... 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

(In Respect to the Petitioner 's Applications dated 6/1/2025 and 20/1/2025)

RULING

1. What is before court are two Applications filed by the Petitioners dated 6/1/2025 and 20/1/2025.

The Notice of Motion dated 6/1/2025

2. In the application dated 6/1/2025, the Petitioner s ' sought the following orders That;

a. Spent.

b. Spent.

c. this Honourable Court be pleased to grant the 1st Petitioner leave to so amend her Petitionas to include Bhanu Matti S. Khalil her tenant, in L.R.No.1/345 a residential property as the 2nd Petitioner, Premium Brand Investment Co. Ltd as the 2nd Respondent and the Business Premises Rent Tribunal as the 3rd Respondent represented by the Attorney General.



- d. if prayer 3 is granted, the intended Amended Petition be deemed to have been filed and served on all the Respondents.
 - e. this Honourable court be pleased to call for the record of the proceedings before the Business Premises Rent Tribunal in BPRT E1256 OF 2024 for the purpose of determining the legality of the eviction order issued on 17th December, 2024 in favour of the 2nd Respondent over residential premises known as L.R.No.1/345 and falsely described by the 2nd Respondent as Nairobi/Block 19/239.
 - f. this Honourable Court be pleased to supervise the said proceedings and quash them.
 - g. this Honourable Court be pleased to order that the 2nd Respondent do reinstate/restore forthwith the Petitioner s /Applicants into the possession of the suit property L.R.No.1/345 which is described as Nairobi/block 19/239.
 - h. the OCS Kilimani Police Station do assist in compliance with the order No. 6 above.
 - i. the costs of the application be provided for.
3. The application is premised on the grounds annexed thereto and the supporting affidavits of Esther Kabura Mwangi, Bhanu Matti S.Khalil and Munil Khalil all sworn on 6/1/2025.
 4. Esther Kabura Mwangi deposed that she is the owner of the suit land having inherited the same from a family company namely Nga'ng'a Ltd in 1986. That the 2nd Petitioner has been her tenant for the last 39 years dutifully remitting rent to her on a monthly basis from 1980 to date.
 5. The Deponent further faulted the eviction orders issued by the Business Premises Rent Tribunal (BPRT) purporting to evict the 2nd Petitioner on the grounds that the premises do not fall under the Landlord and Tenants Act (Hotels, Shops, and Catering Establishments Act). That the Tribunal had no powers to issue eviction orders over a residential property and termed the eviction orders issued on 3/1/25 and the purported eviction of the 2nd Petitioner illegal.
 6. She averred that the 2nd Petitioner 's son is not a tenant in the suit premises and yet the 2nd Respondent purported to issue him with an eviction notice over the suit premises. It was also averred by the 1st Petitioner that she has never transferred the suit land to the 2nd Respondent and urged the court to nullify the decision of the Tribunal and restore the property and tenancy to the Petitioners respectively. In her further affidavit sworn on 9/1/2025, the Deponent has annexed various receipts and correspondences between the 2nd Petitioner and the letting agent Messrs Nairobi Homes Ltd with respect to the payment of rent by the 2nd Petitioner.
 7. Bhanu Matti S. Khalil stated that she has been a tenant of the 1st Petitioner since 1/12/1986 and has paid rent timeously for the last 45 years. She added that the house was let to her way back in 1980 by the previous owner, Ng'ang'a Ltd, a family company which she inherited the premises upon its winding up. She recounted the events of 3/12/2025 on how the 2nd Respondent forcefully evicted her and her family from the property without any notice. She denied the 2nd respondents averments that she was a tenant of the 2nd Respondent. She denied any notice of the case at the Business Premises Rent Tribunal or any orders issued thereat.
 8. Munil Khalil also recounted the events of 3/12/2025 and added that he has lived on the suit property with his family since 1980. Just like the 2nd Petitioner he was not notified of the Tribunal case nor the eviction orders and that he does not owe any rent to the 2nd Respondent whom he claims to be a



stranger. That he was not served with any termination notice by the 2nd Respondent. In addition, that the termination notice did not disclose the suit property in question.

The Notice of Motion Dated 20/1/2025

9. The Petitioners, vide the application of 20/1/2025, sought orders for access to the suit property for purposes of assessing the damage on the property/computing the losses suffered. Secondly, that the OCS Kilimani Police Station to provide Security to the Petitioners during the exercise. The application is based on the grounds annexed thereto and the supporting affidavit of even dates sworn by Esther Kabura Mwangi. The Deponent reiterated her earlier deposition that she is the owner of the suit land and that the entry and eviction by the 2nd Petitioner of the 2nd Respondent was illegal, null and void. That the eviction constituted a breach of her right to property as espoused under Article 40 of *the Constitution* of Kenya as well as Article 50 of *the Constitution* with respect to her right to a fair trial. That following the illegal eviction and the take-over of her property it has become necessary for the Petitioners and their valuers to re-enter the property, assess the damages for the destruction of the house and other movable property and undertake a valuation thereof.

The 2nd Respondents Replying Affidavit

10. The applications dated 6/1/2025 and 20/1/2025 are opposed by the 2nd Respondent. Daniel Akama Okello vide a replying affidavit sworn on 7/2/2025 stated that he is a Director the 2nd Respondent and duly authorised to respond to the application.
11. He faulted the Petitioner 's applications on the grounds that no Judicial Review has been taken out with respect to the eviction orders issued by BPRT.
12. He averred that the 2nd Respondent is the registered proprietor of the suit land (Nairobi Block 19/239 formerly known as LR.1/345) having acquired through allotment from the Government of Kenya, in 2013. He denied the 1st Petitioner 's averments that she owns the suit land and that no proof of ownership has been adduced before the Court. That the rent payment receipts and the deposit vouchers allegedly paid by the 2nd Petitioner make no reference to the suit land.
13. That through their agents, the Petitioners were served with the notice of eviction in accordance with the law and when the notice was ignored, the 2nd Respondent moved the BPRT and obtained orders of eviction which orders have not been appealed, set aside or vacated.
14. The deponent contended that the 2nd Respondent left the premises with all their property and currently there is nothing in the premises since the 2nd Respondent has excavated the land for purposes of development. That orders of access and valuation of damages will therefore be unnecessary.
15. In conclusion, the Deponent contended that the applications and the entire Petitionare without any legal basis; there is no prima facie case established against the 2nd Respondent with a probability of success. There is no reasonable cause of action against the 2nd Respondent, and neither is there prejudice or irreparable loss that has been established by the Petitioners. The 2nd Respondent acquired the property legally and the Court was urged to dismiss the applications.

The written submissions

16. I have read and considered the written submissions of the parties in this Ruling.



Analysis and determination

17. Having considered the two applications, the various rival responses and the written submissions, the issues that arise at this juncture for the court's determination are;
- a. Whether the court should grant the applicants leave to amend their Petition.
 - b. Whether the applicants should be granted orders for access to the suit property for purposes of assessing the damage on the property/computing the losses suffered.
 - c. whether the court should grant orders directing the OCS Kilimani Police Station to provide Security to the Petitioners during the exercise.
 - d. whether the Court should grant orders prayed under para e, f and g of the application.
 - e. Costs of the applications.

18. The legal framework governing amendment of pleadings is found in Section 100 of the [Civil Procedure Act](#) which states as follows: -

“The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”

19. Order 8 Rule 5 of the Civil Procedure Rules states as follows: -

“(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.

(2) This rule shall not have effect in relation to a judgment or order.”

20. From the above provisions of the law, the guiding principle is that all amendments should be freely allowed at any stage of the proceedings provided that the amendment will not result in prejudice or injustice which cannot be compensated with costs. Therefore, inordinate delay, introduction of new causes of action, injustice, taking away a vested interest or right arising from Limitations of Actions Act are some of the causes of prejudice or injustice to a party and a Court is called upon to satisfy itself that none will be visited to the parties before allowing the amendment.

21. The rationale for the exercise of the discretionary power of the Court has been aptly captured by the 4th Defendant in the case of *Central Kenya Limited Vs Trust Bank Limited & 5 Others* [200] eKLR which was cited before the Court and where the appellate Court restated the general principles in amendment of pleadings as

:“... that a party is allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.”



22. Their Lordships went on to state that;

“It is also trite law that as far as possible a litigant should plead the whole of the claim which he is entitled to make in respect of his cause of action. Otherwise the Court will not later permit him to reopen the same subject of litigation (see O.II rule 1 of the Civil Procedure Rule) only because they have from negligence, inadvertence or accident omitted that part of their case. Amendment of pleadings and joinder of parties is meant to obviate this. Hence the guiding principle in applications for leave to amend is that all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs. (see, *Beoco Ltd v. Alfa Laval Co. Ltd* [1994]4 ALL ER. 464).”

23. In this case the court finds that in the interest of justice the application to amend the Petition be and is hereby granted to allow the Petitioners plead their whole case at once. I also note that neither of the respondents have raised any serious challenge to the application to amend the petition.

24. With respect to the second issue, it is not in dispute that the 2nd Applicant has been evicted from the suit land. The Applicants have sought leave of the court to be allowed access to the property for purposes of assessing the damages to the suit land and to the personal properties therein. The 2nd respondent's response is that the Applicants were removed from the suit land and that they are now excavating the suit land for development. In view of the averments of the 2nd Respondent I find no justifiable reason to deny the applicants access to the suit land at the earliest instance before further disturbance is made on the suit land.

25. With respect to the other prayers sought under para e, f and g, I have keenly perused the Petition and find that these prayers form the substance of the Petitioner's reliefs and in the interest of justice the same are best left to the trial court to take evidence. It is also evident that the issues are highly contested between the parties so much so that the likelihood of an injustice being occasioned is high if they are determined at the interlocutory stage.

Final orders for disposal

26. In the end the applications partially succeed as follows;

- a. The application for leave to amend the Petition be and is hereby allowed.
- b. The Petitioners are directed to file and serve the amended Petition within 14 days from the date of the ruling.
- c. Upon service the Respondents, be and are at liberty to file their replying affidavits within 21 days.
- d. Prayers sought under para e, f and g be and are hereby deemed premature and are hereby struck out.
- e. The Applicants be and are hereby allowed access to enter the premises with their valuers and or agents in the presence of all the parties for purposes of assessing the damage(s), if any, on the property/computing losses that may have been suffered.
- f. The OCS Kilimani Police Station to provide Security to the Petitioners during the exercise.
- g. Costs shall abide the Petition.



DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF MARCH 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

Ms Nduta Kamau for the Petitioners

N/A for the 1st Respondent

Mr Angaya for the 2nd Respondent

N/A for the 3rd Respondent

CA- Ms. Yvette Njoroge

