



Kanyore v Gakobo; Njoki (Intended Defendant); Mwangi (Intended Plaintiff) (Environment & Land Case 339 of 2014) [2025] KEELC 160 (KLR) (29 January 2025) (Ruling)

Neutral citation: [2025] KEELC 160 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 339 OF 2014
MAO ODENY, J
JANUARY 29, 2025**

BETWEEN

THOMAS MWANGI KANYORE PLAINTIFF

AND

JONAH MAINA GAKOBO DEFENDANT

AND

MARY NJOKI INTENDED DEFENDANT

AND

ROSEMARY WANGARI MWANGI INTENDED PLAINTIFF

RULING

1. This ruling is in respect of a Notice of Motion dated 2nd July, 2024 by the Applicant seeking the following orders:
 - a. That the plaintiff be granted leave to amend his plaint in line with the annexed draft amended plaint.
 - b. That the plaint be amended in terms of the annexed draft amended plaint.
 - c. That the annexed draft amended plaint be deemed duly filed and served upon payment of the requisite court fees.
 - d. That cost of this application be provided for.
2. The application was supported by the affidavit of Rosemary Wangari Mwangi sworn on 2nd July, 2024 who deponed that the Plaintiff is her father who appointed her through a power of attorney due to



his old age. It was her case that the Defendant passed away which necessitated her to file a citation. She stated that the Court granted an order for substitution of the Defendant with his wife Mary Njoki.

3. The Defendant, Jonah Maina Gakobo filed a Replying Affidavit sworn on 12th August, 2024 and deponed that the intended amended Plaint will change the character of the case as the intended Plaintiff alleges that she was present when the Plaintiff completed the transfer process of the suit land.
4. He further deponed that the Applicant seeks to introduce issues not previously raised in the original plaint which will be prejudicial to the Defendant and that the Plaintiff has good control of his faculties despite his age.
5. The Applicant filed a Further Affidavit sworn on 23rd October, 2024 and stated that the issues raised by the Defendant/Respondent are substantive in nature which should be heard at the hearing of the main suit.

Applicant's Submissions

6. Counsel for the Applicant filed submissions dated 23rd October, 2024 and identified the issue for determination as whether the Plaintiff/Applicant is entitled to the order for substitution.
7. Counsel relied on Order 24, Rule (1) of the Civil Procedure Rules and submitted that where a defendant dies and the cause of action survives the defendant, then such deceased person can only be substituted by the legal representative of his estate. Counsel submitted that based on citation cause No E087 of 2023, it is not in dispute that the Defendant is the legal representative of the estate of the defendant and thus a right party to be substituted in place of the Defendant.
8. Counsel submitted that the Applicant has a power of attorney and therefore there is no dispute that the Applicant is an agent of the Plaintiff. Counsel relied on the case of Silas Njeru Njiru & 2 others vs Mugo Mukere; Leonard Njeru Mukera & another (Intended Defendants/Respondents) [2022] eKLR and urged the court to allow the application.

Defendant/respondent's Submissions

9. Counsel filed submissions dated 29th November, 2024 and identified the following issues for determination:
 - a. Whether the prayer to amend the plaint herein can be allowed?
 - b. Whether costs should issue?
10. Counsel submitted that the proposed amendment is not necessary given that it will not aid the Court in determination of the real controversy in this suit which is ownership of the suit land. It was counsel's further submission that the proposed amendment will be inconsistent and contradictory to the admitted position of facts, which will prejudice the Respondent.
11. Mr. Kahiga submitted that the Respondent cannot be compensated by way of costs as it has been more than ten-years since institution of this suit and that the Respondent is entitled to similar protection by the court as the Plaintiff/Applicant. Counsel relied on the case of Joseph Ochieng, Philip Kafuande and Henry Hegga Trading as Aquilline Agencies vs First National Bank of Chicago [1995] KECA 31 (KLR).
12. Counsel urged the court to dismiss the application and in the event that the same is allowed, counsel prayed for costs of Kshs 120,000/.



Analysis And Determination

13. The issue that arises for determination is whether the Applicant should be allowed to amend the Plaintiff.
14. Amendments of pleadings is governed by Section 100 of the *Civil Procedure Act* which provides 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”.
15. Order 8 Rule 3(1) of the Civil Procedure Rules provides 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.”
16. The Court of Appeal in the case of *Central Kenya Limited v Trust Bank limited* (2000)2 E.A 365 held as follows:

“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.”
17. The Applicant seeks to amend the plaintiff on the grounds that the Plaintiff is aged and he has appointed the Applicant through a power of attorney to represent him in this case. The court had already allowed the parties to regularize the proceedings to include the legal representative of the deceased defendant as a party to the suit on 11th June 2024. The only issue remaining is the amendment of the plaintiff to substitute the Plaintiff with the Applicant.
18. From the draft amended Plaintiff it is clear that the Applicant is not introducing a new cause of action as the orders sought remain the same. The issues raised by the respondent are facts, which can be dealt with at the hearing of the suit. An amendment does not give the Applicant an edge over the respondent as the evidence shall be subjected to cross-examination.
19. The provisions of law and precedent dictates that amendments should be freely allowed any time before judgment if they will not occasion any prejudice to the opposing party. There is no evidence that the amendment will cause any prejudice to the respondent
20. I have considered the application, the submissions by counsel and find that the application has merit and is therefore allowed as prayed with costs in the cause. Applicant to file and serve an amended plaintiff within 14 days and the respondent to have corresponding leave to file a defence if need be upon service.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 29TH DAY OF JANUARY 2025 .

M. A. ODENY

JUDGE

