



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njau v Jerotich (Environment & Land Case E005 of 2022)  
[2023] KEELC 19135 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19135 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E005 OF 2022**

**JM ONYANGO, J**

**JULY 26, 2023**

**BETWEEN**

**DANIEL KARANJA NJAU ..... PLAINTIFF**

**AND**

**PAULINE JEROTICH ..... DEFENDANT**

**RULING**

1. The Applicant moved the court through a Notice of Motion dated 27<sup>th</sup> February, 2023 seeking leave to amend the Originating Summons and add Robert Kipkemei Maiyo and Josephat Kiproop Maiyo as co-defendants in the suit.
2. The application is premised on the grounds set out on the face of the Notice of Motion and the Applicant's supporting affidavit sworn on the 27<sup>th</sup> February, 2023. The main reason why the Applicant seeks to amend the Plaint is that the mother title of the subject matter has since been sub-divided into ten parcels of land which are registered in the names of the Respondents and other parties who need to be joined to the suit. The particulars of the said changes have been elaborated in the supporting affidavit.
3. In opposing the application the Respondent filed a Replying Affidavit sworn on 14<sup>th</sup> March, 2023 in which she deposes that the application is bad in law and unmeritorious as it is intended to circumvent the Notice of Preliminary Objection dated 24<sup>th</sup> August, 2022.
4. The court directed that the application be disposed of by way of written submissions and both parties complied.
5. The main issue for determination is whether the Applicant ought to be granted leave to amend the Originating Summons.



## Analysis and Deermination

6. Order 8, rule 3 of the [Civil Procedure Rules](#) provides as follows:

Amendment of pleadings with leave

1. Subject to Order1, 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. The principles that should guide the court in dealing with applications for amendments are elaborated in Mulla, the Code of Civil Procedure, 18<sup>th</sup> Ed, Vol 2 pages 1751-1752 which has been cited in various authorities including the case of [Coffee Board of Kenya v Thika Coffee Mills Limited & 2 Others](#) (2014) eKLR where it is stated as follows:

- i. Amendments should be allowed which are necessary for determination of the real controversies in the suit;
- ii. The proposed amendment should not alter and be a substitute of the cause of action on the basis of which the original list was raised;
- iii. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of fact would not be allowed to be incorporate by means of amendments;
- iv. Proposed amendments should not cause prejudice to the other side which cannot be compensated by means of costs;
- v. Amendments of a claim or relief barred by time should not be allowed;
- vi. No amendment should be allowed which amounts to or results in defeating a legal right to the opposite party on account of lapse of time
- vii. No party should suffer on account of the technicalities of law and amendment should be allowed to minimize the litigation between the parties
- viii. The delay in filing the petitions for amendment should be properly compensated by costs
- ix. Error or mistake, which is not fraudulent, should not be made the ground for rejecting the application for amendment of pleadings”

8. In the case of [Crown Berger \(K\) Limited v Patsa Hardware \(K\) Ltd](#) [2005] eKLR the court cited the case of [Central Kenya Limited v Trust Bank Limited](#) 2000 E.A 365 where the Court of Appeal set out the principles that guide the court in considering an application for amendment of pleadings as follows:

“A party is allowed to make such amendments as may be necessary for determining the real question in controversy so as 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.”



9. Similarly in the case of *Institute for Social Accountability & Another v Parliament of Kenya & 3 others* [2014] eKLR, where the court observed that:

“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 the 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 form of the action or proceedings.”

10. In *Suleiman v Karasha* [1989]eKLR the Court of Appeal held that:

“Under the Civil Procedure Rules, the parties can amend their pleading with the leave of the court at any time before judgment. Such amendment would clearly set the issues in dispute to enable the Court to arrive at a just decision. It does not matter if the hearing has been concluded but the court has to consider the application for amendment and give effect to it as it may deem just.”

11. What can be gleaned from the above case is that the court has a wide discretion to amend pleadings at any stage of the proceedings so to bring out the real issues in controversy between the parties and on such terms as to costs as may be just.

12. In the present case, the Applicant has explained that land parcel number Uasin Gishu/ Kimumu/107 on which the Applicant has based his claim no longer exists as it has been sub-divided into 10 parcels ranging L.R No. Uasin Gishu/ Kimumu/1077-9087.

13. The Respondent contends that by seeking to amend the O.S, the Applicant is trying to circumvent the Notice of Preliminary Objection dated 24.8.2022. He further contends that he Applicant has not identified the number of the parcel that he is occupying and that the application is not made in good faith.

14. I am of the considered view that as long as the amendments sought are within the limits set out in the above mentioned authorities, they ought to be allowed. I concur with the decision of Munyao J in *Kiplangat Arap Korir v Richard Kipyegon Korir & 3 Others* ( 2016) eKLR where faced with a similar application the learned judge held as follows:

“I do not indeed see how the plaintiff can proceed with the case as originally filed without effecting the proposed amendments. This is because the subject matter in the original pleadings relate to land parcel Transmara Kimintet/441 which land parcel number no longer exists. What now exists is land parcels number Transmara Kimintet/1426 and 1427. If it remains un-amended there will be no subject matter left for trial given that the original title has been sub-divided”.

15. The amendments are necessary to reflect the new title numbers and since two of them are registered in the names of other parties, it is necessary to bring in the new parties so as to resolve all the issues in controversy.

16. In view of the foregoing, I find merit in the application and I grant it with costs to the Respondent. The new parties shall be served with the pleadings within 14 days.

**DATED, SIGNED AND DELIVERED VIRTUALLY, THIS 26<sup>TH</sup> DAY OF JULY 2023**



.....

**J.M ONYANGO**

**JUDGE**

**In the presence of;**

1. Miss Yatich for Mrs. Cheptinga for the Plaintiff/Applicant
2. Mr. Komen for the Defendant/Respondent

Court Assistant: A. Oniala

