



**Meru North Cooperative Union Ltd v Nchebere (Environment & Land Case E019 of 2022) [2023] KEELC 21953 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21953 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E019 OF 2022  
CK NZILI, J  
NOVEMBER 29, 2023**

**BETWEEN**

**MERU NORTH COOPERATIVE UNION LTD ..... PLAINTIFF**

**AND**

**ALINA KAJUJU NCHEBERE ..... DEFENDANT**

**RULING**

1. By an application dated 27.9.2023, the court is asked to allow the defendant to amend his defence and include a counterclaim. The reasons contained on the face of the application and in the affidavit sworn by Alina Kajuju Nchebere are that the same is brought in good faith; there will be no prejudice to the opposite party, and it was only fair, just and equitable to allow the application.
2. The respondent does not share the same views with the applicant. In a replying affidavit sworn by John Gichunge filed on 5.10.2023, it is averred that the amendment was unnecessary, an afterthought, a delaying tactic and out to circumvent the suit.
3. Further, the respondent terms the application as an abuse of the court process, seeking to introduce a new cause of action founded on adverse possession that does not arise from the same facts as in the plaint filed herein.
4. To allow or not to allow an amendment is a discretionary power bestowed upon the court. The power is donated by Order 8 Rule 5 *Civil Procedure Rules*. Amendments enable the court to determine the real question in controversy between the parties or correct a defect or error in any proceedings.
5. In *Central Bank of Kenya Ltd vs Trust Bank Ltd* (2000) 2. E. A 365, the court held that a party is allowed to make 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 and that no vested interest or accrued legal right is affected, and no injustice would be occasioned to the opposite party.



6. In *Institute of Social Accountability and another vs Parliament of Kenya and others* (2014) eKLR, the court held the objective of amendments was to enable parties to alter their pleadings to ensure the litigation between them was conducted not on the false hypothesis of the facts already pleaded or relief or remedy already claimed, but instead based on the state of facts which parties really and finally intend to rely on. The court said the amendments make the court functional in determining the substantive merits of the case rather than holding it captive to the form of the action and proceedings.
7. In *St. Patrick's Hill School Ltd vs Bank of Africa (K) Ltd* (2018) eKLR, the court said amendments could be at any stage of proceedings and a late amendment should be allowed if made in good faith, unless aimed at abusing the court process or bringing inconsistent allegations with the previous pleadings as held in *Kyalo vs Bayasuf Brothers Ltd* (1983) KLR or likely to prejudice the opposite party as held in *Agik (K) Ltd vs Highlands Tyres Ltd* (2001) KLR 630.
8. Regarding introducing a counterclaim through amendments, in *Rivandell Ltd vs Kenya Airways Ltd* (Civil Case No. E305 of 2020 (2022) KEHC 549 (KLR) commercial & Tax (28<sup>th</sup> April 2022) (Ruling) the court cited *Joseph Ochieng & 2 others t/a Aquiline Agencies vs First American Bank of Chicago* (1995) eKLR, that an amendment to introduce a new case or new ground of defence, may be allowed, unless it would change the action into one of a different character which could more confidently be made the subject of a fresh action. The court nevertheless allowed the proposed counterclaim since the plaintiff had not demonstrated what prejudice it stood to suffer, which was not compensable by way of costs, if leave was granted.
9. In this application, the defendant alluded to Sections 7 and 8 of the *Limitation of Actions Act* in the statement of defence dated 4.11.2022. In the reply to the defence, the plaintiff, in paragraph 6, responded to the question of adverse possession. The proposed defence and counterclaim build on the pleaded facts and cannot amount to a new cause of action.
10. The suit is yet to commence. The intended amendments will bring all the issues in controversy on board to avoid a multiplicity of suits and save judicial time when all matters are brought under the same umbrella. The respondent will also have an opportunity to respond to the intended counterclaim. The upshot is that I find the application with merits.
11. The same is allowed with costs. The proposed amended defence and counterclaim to be filed and served within 15 days from the date hereof.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU  
ON THIS 29<sup>TH</sup> DAY OF NOVEMBER 2023**

**HON. CK NZILI  
JUDGE**

*In presence of*

*C.A Kananu/Mukami*

*Anguche for respondent*

