



Mwarabu & another (Suing as the administrators of the Estate of Kazungu Mwarabu Dida alias Kazungu Mwarabu) v Kiringi & another (Environment & Land Case E057 of 2022) [2025] KEELC 3237 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3237 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E057 OF 2022
FM NJOROGE, J
APRIL 8, 2025

BETWEEN

**MBODZA KAZUNGU MWARABU & BOSTON MWANGONDE KAZUNGU
(SUING AS THE ADMINISTRATORS OF THE ESTATE OF KAZUNGU
MWARABU DIDA ALIAS KAZUNGU MWARABU) PLAINTIFF**

AND

SIMBA KIRINGI 1ST DEFENDANT
MOMBASA CEMENT LIMITED 2ND DEFENDANT

RULING

1. The Notice of Motion application for determination is dated 31/12/2024, brought under Section 3A of the *Civil Procedure Act*, Order 8 Rules 3 & 5 and Order 51 Rule 1 of the Civil Procedure Rules. The Plaintiffs are seeking this Court's leave to amend their Plaint dated 7/10/2022, to add the Land Adjudication & Settlement Officer, Kilifi, the Land Surveyor, Kilifi, the Land Registrar, Kilifi and the Attorney General as Defendants in this suit, and costs of the application be in the cause.
2. The Application which was supported by the affidavit sworn by Boston Mwangonde Kazungu on an even date was premised on the following grounds: -
 1. That the claim is for recovery of rectification of the register of the suit land and the restoration of the acreage of the suit land;
 2. That in the Plaint dated 7/10/2022 the parties who caused the registration of the suit land, reduction of its acreage, were inadvertently omitted;
 3. The omitted parties are the Land Adjudication & Settlement Officer, Kilifi, the Land Surveyor, Kilifi, the Land Registrar, Kilifi and the Attorney General;



4. The Land Adjudication & Settlement Officer and the Land Surveyor caused the reduction of the acreage of the suit land and created a new parcel of land which was registered in the name of the 1st Defendant by the Land Registrar;
 5. That the presence of the said parties in this suit is necessary as it will enable the Court to determine the real question in controversy and effectually and completely adjudicate upon and settle all questions involved in this suit. This amendment will not substitute a new cause of action.
3. The 1st Defendant filed a Replying Affidavit which he swore on 18/2/2025, urging the court to dismiss the same for lack of merit. He stated that the application is an abuse of the court process meant to delay the just conclusion of the suit. Notably, the 1st Defendant's affidavit was not witnessed by a Commissioner Of Oaths.
 4. The court directed parties to file written submissions, however, as at the time of writing this ruling, only the Plaintiffs had complied. Their written submissions are dated 10/1/2025 wherein they reiterated the facts averred in their application and supporting affidavit. They argued that the presence of the intended defendants will enable the court to determine the real question in controversy and effectually adjudicate upon and settle all issues in dispute.
 5. The single issue for determination is whether the Plaintiffs are deserving of leave to amend their plaint. Order 8 Rule 3 of the Civil Procedure Rules provides for amendment of pleadings with leave of court 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.”
 6. Further, Order 8, rule 5 thereon gives the court the general power to amend.
 - “5.
 - (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.”
 7. It is also trite that the purpose of allowing amendment of pleadings is to enable the court to determine the real issues in controversy between the parties, to enable a final resolution of the dispute, for once and for all. For the court to allow an amendment, it has to first look into the intent and purpose of the amendment and whether any prejudice will be suffered by the other party or parties in dispute and whether prejudice can be compensated by way of costs.
 8. The Court of Appeal outlined the principles in amendment of pleadings in *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] eKLR as follows:
 - “The law on amendment of pleading in terms of section 100 of the *Civil Procedure Act* and Order VIA rule 3 of the repealed Civil Procedure Rules under which the application



was brought was summarized by this Court, quoting from Bullen and Leake & Jacob's Precedents of Pleading - 12th Edition, in the case of Joseph Ochieng & 2 others *vs. First National Bank of Chicago, Civil Appeal No. 149 of 1991* as follows: -

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Acts.”

9. The principles are therefore clear that that the amendment should not introduce new or inconsistent cause of actions or issues; the amendment should be made timeously; it should not affect any vested interest or accrued legal right and it should not prejudice or cause injustice to the other party.
10. I have keenly perused the draft amended Plaint, I am satisfied that no new cause of action is being introduced and that no prejudice will be occasioned to the other parties if the amendments are allowed. In any event, the Defendant will be at liberty to amend their pleadings if need be.
11. The upshot is that the application dated 31/12/2024 is merited, it is thus allowed as prayed. The suit shall be mentioned on 8/5/2025 for directions on the Motion dated 22/1/2025.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 8TH DAY OF APRIL 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

