



**Ngare (Suing as the legal representative of the estate of Stephen
Ng'are Ogamba (Deceased) v Ogamba (Environment & Land Case
E001 of 2022) [2022] KEELC 14596 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14596 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E001 OF 2022**

JM KAMAU, J

OCTOBER 27, 2022

BETWEEN

**ESTHER NYABATE NGARE PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF STEPHEN
NG'ARE OGAMBA (DECEASED**

AND

ARNOLD RASUGU OGAMBA DEFENDANT

RULING

1. Before me is an Application dated 02/09/2022 in which the Defendant/Applicant One Arnold Rasugu Ogamba seeks the court's leave to amend the counterclaim dated 13/06/2022 in terms of the annexed Draft amended Counterclaim. He has also sought that the Draft annexed amended Counterclaim be deemed as duly filed upon payment of the requisite fee. On the face of the said Application, the Applicant states that upon perusal of his pleadings and the accompanying evidence, he realized there is need to amend the counterclaim in order to add material facts. If allowed, the amendment will not in any way prejudice the Defence and that the proposed amendments are necessary in order for the court to make a just determination of the issues in the suit. He has pleaded with the court to allow him make the amendments so that the omission to do so does not lead to him suffering injustice. In the accompanying Affidavit sworn on the same day as the Application, the Defendant pleads with the court that the Hearing of the suit is yet to commence and that he risks to suffer irreparable loss if his prayers are not granted in light of the subject matter of the dispute and the general background of the case.
2. In the Plaintiffs' Replying Affidavit sworn on 05/10/2022, the Respondent is of the view that the amendments sought are in form rather than substance which view the court agrees with. The same



would not in any way affect the substratum of the suit. The Respondent therefore asks the court to allow the Application in the interest of Justice.

3. I have looked at the Draft amended Counterclaim and other than substituting parties as “Counter-claimant” “for the original Defendant” and “the original Plaintiff” now becomes “the Defendant” and the description of the parties, the only other amendment sought is an additional prayer number (c);

“Any other relief and remedy that the court may deem fit to grant for the tenets of Justice to be met.”

4. What does the *Civil Procedure Rules* say concerning this prayer? The answer to this is found in Order 51 Rule 11 of the *Civil Procedure Rules*;

“It shall not be necessary in an Originating summons, Application or other process to ask for costs, or for general or other relief, which may be granted by the court as it thinks just.”

5. Going by the rule of *ejusdem generis*, a Plaintiff falls in the category of “other process”. It is therefore not necessary to have moved this court for the inclusion of the prayer for any other relief. Could be the Defendants’ fears may have come from some school of thought that is emerging that courts should not grant orders that have not been prayed for in the suit since this would be “assisting” the litigants. Fortunately, I do not subscribe to this school of thought. If the evidence produced in court would manifest a particular cause of action, then the same should be granted since the parties would not get any other avenue of ventilating the same.

6. In the premises, since the Application is not opposed, the same is hereby granted. However, the Applicant can opt to proceed with the suit without amending the Counter-claim without any prejudice to him. The choice is his and by necessary extension his Advocates who may be comfortable with proceeding with the suit after amendment.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 27TH DAY OF OCTOBER 2022.

MUGO KAMAU

JUDGE

In the Presence of:

Court Assistant: Sibota

Plaintiff: Mr. Ochoki

Defendant: Mr. Bonuke

