



Salim v Ibrahim (Land Case E026 of 2023) [2025] KEELC 4177 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4177 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
LAND CASE E026 OF 2023
EK MAKORI, J
MAY 29, 2025**

BETWEEN

FARID MOHAMED SALIM PLAINTIFF

AND

HALIMA IBRAHIM DEFENDANT

RULING

1. Through her application dated December 6, 2024, the Defendant requests leave from the Court to join the Chief Land Registrar, Kilifi, and the National Land Commission as parties to the suit.
2. The application is supported by the grounds presented within the Chamber Summons and the Defendant's supporting affidavit sworn on December 6, 2024.
3. The Defendant/Applicant has attached to her supporting affidavit the evidentiary documents on which she relies, as well as a draft defense to support the cause of action she has against the Plaintiff and the parties she intends to join in the suit.
4. The Plaintiff opposes the application through a replying affidavit sworn by him on January 28, 2025.
5. On February 20, 2025, when this matter was called for mention, the Court directed that the Defendant's application be addressed through written submissions. The parties complied.
6. Upon reviewing the materials and submissions presented, the matters that I outline for this court's consideration encompass the evaluation of whether to grant permission for amending the defense, introducing a counterclaim, and adding new parties to the suit. Additionally, it involves the determination of the party responsible for bearing the costs associated with these proceedings.
7. The Defendant/Applicant asserts that she acquired the suit property on May 20, 2010, from an individual named Joseph Mwarua Ngoro, took immediate possession of the property, enclosed it, and constructed a building there. The Plaintiff confirms, as stated in paragraph 7 of his Affidavit, that indeed the Defendant is in possession of the suit property.



8. The Plaintiff further asserts that throughout the Replying Affidavit, there is no indication that the Plaintiff/Respondent mentions visiting the suit property prior to December 28, 2022, despite his assertion that he was allotted the suit property on June 1, 1997. Nevertheless, the Plaintiff/Respondent corroborates the Defendant/Applicant's claim that she has been in possession of the suit property since 2010.
9. The letter dated November 25, 2022, which constitutes the Defendant/Applicant's annexure HI 6, from the National Land Commission Coordinator in Kilifi to the Chief Land Registrar in Kilifi, supports the Defendant/Applicant's claim that she has maintained possession of the suit property at all pertinent times.
10. The Plaintiff contends that this further substantiates that the Defendant/Applicant's claim of ownership of the suit property is not without merit. The claim warrants a thorough investigation by this Court through a full hearing on the merits, during which both the Chief Land Registrar and the National Land Commission, represented by the Honourable Attorney General, will need to be questioned regarding the circumstances that led to the allocation of the suit property to the Plaintiff.
11. The Plaintiff/Respondent cites the decision in *Jack Mathenge Giturwa & another v Citimark Investment Limited* [2022] KEELC 1680 (KLR) and contends that the pleadings in this case have long since closed. Furthermore, it is asserted that the present application is filed excessively late, and that the Defendant/Applicant appears determined to postpone the hearing and resolution of this matter.
12. In the context of deliberating on the legal provisions pertaining to an application for leave to amend pleadings, a position with which I concur, as cited by the Applicant, the court in the case of *Pakaja Limited v Trustees of Mombasa Simba Sports Club & 3 others; Singh Sabha Community (Interested Party)* [2022] KEELC 450 (KLR) articulated the following:

“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”
13. This Court possesses the discretion to consider and adjudicate an application for leave to amend pleadings at any stage of the proceedings, provided that the application is submitted in good faith and does not result in any prejudice to the opposing party.
14. Looking at the entirety of the application, I see no prejudice in allowing the Applicant/Defendant to amend the defence and incorporate new parties, as the same will aid in the determination of the issues for trial in these proceedings
15. The upshot is that the application dated December 6, 2024, is valid and is hereby granted as prayed.

DATED, SIGNED, AND DELIVERED VIRTUALLY IN MALINDI ON THIS 29TH DAY OF MAY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Osoro for the Applicant

Ms. Faith for the Respondent



Happy: Court Assistant

