



Kabuga & 45 others v Njiru & 3 others (Environment & Land Case 5 of 2023) [2025] KEELC 735 (KLR) (5 February 2025) (Ruling)

Neutral citation: [2025] KEELC 735 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE 5 OF 2023**

AK BOR, J

FEBRUARY 5, 2025

BETWEEN

RONALD NJUE KABUGA & 45 OTHERS & 45 OTHERS & 45 OTHERS & 45 OTHERS & 45 OTHERS PLAINTIFF

AND

JULIUS NJERU NJIRU 1ST DEFENDANT

BENJAMIN NJERU NGANATHA 2ND DEFENDANT

NJAGI IRERI 3RD DEFENDANT

LAND REGISTRAR KIRITIRI MBEERE SOUTH SUB-COUNTY 4TH DEFENDANT

RULING

1. The plaintiffs filed the application dated 15/4/2024 seeking leave to amend the plaint to include additional information that was left out when they filed the suit and to add the Land Registrar Kiritiri, Mbeere South Sub–County, as the 4th defendant to the suit. The application was made on the grounds that the additional information relating to the suit properties is crucial and will aid the court in determining this matter and that the Land Registrar was a necessary party in the suit for all the issues to be determined at once to avoid a multiplicity of suits. It was urged that the defendants would not be prejudiced by the amendments sought. The plaintiff swore the affidavit in support of the application and attached the draft amended plaint containing the proposed amendments.
2. The 1st to 3rd defendants filed grounds in opposition to the application in which they contended that the proposed amendments to the plaint would change the cause of action of the previous suit, hence the application was incompetent. Further, that the application offended the provisions of Order 8 Rule 3 and Order 1 rule 10 of the *Civil Procedure Rules* and was bad in law. They surmised that the application lacked merit and was an abuse of the court process and urged the court to dismiss it.



3. The plaintiffs filed submissions where they generally reiterated that the proposed amendments were necessary and that they would not occasion prejudice to the defendants. On their part, the 1st to 3rd defendants submitted that the proposed amendments introduced new facts and legal grounds that significantly deviated from the original claim and that while they were originally required to respond to a claim for encroachment of the suit lands, they will now be required to respond to a claim relating to the unprocedural registration of the suit lands by the Land Registrar and cancellation of titles. They submitted that this was a fundamental alteration that introduces an entirely new claim. They claimed that they would be prejudiced as they would be compelled to defend themselves against a suit they were not initially called upon to respond to. They also urged that the application was an afterthought.
4. The issue for determination is whether the court should grant leave to the plaintiffs to amend their plaint as sought. Order 8 Rule 5(1) of the *Civil Procedure Rules* grants the court the general power to allow amendments to pleadings to facilitate the determination of the real issues in controversy or to correct any defect or error in proceedings. The court has the discretion to permit such amendments either on its own motion or upon application by a party, subject to terms as to costs or other conditions deemed just.
5. The 1st to 3rd defendants have argued that the amendments sought change the cause of action. Looking at Order 8 Rule 3(5), an amendment that introduces a new cause of action may be permitted if it arises from substantially the same facts as those initially pleaded. The court is satisfied that the amendments sought fall within the permissible scope of amendments under the *Civil Procedure Rules*. The court has not been told what prejudice the defendants will suffer if the amendments are allowed.
6. The role the Land Registrar played is crucial in the dispute which relates to land ownership and registration, and his inclusion will aid this court in the just determination of the suit. The court notes that a defence has already been filed on behalf of the Land Registrar.
7. The court allows the application dated 15/04/2024. The Plaintiffs will file and serve their amended plaint within 7 days of today. The 1st to 3rd defendants will file their amended defence within 14 days of service of the amended plaint. The costs of the application will be in the cause.

DELIVERED VIRTUALLY AT EMBU THIS 5TH DAY OF FEBRUARY 2025.

K. BOR

JUDGE

In the presence of: -

Ms. L. Otieno holding brief for Ms. R. Makworo for the Plaintiffs

Ms. W. Kamochu holding brief for Ms. M. Ndeke for the Defendants

Ms. Janice Kendi - Court Assistant

