



**Wamalwa v Aggrey (Environment and Land Miscellaneous Application
2 of 2022) [2025] KEELC 361 (KLR) (5 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 361 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 2 OF 2022**

CK NZILI, J

FEBRUARY 5, 2025

BETWEEN

BEATRICE WAMALWA PLAINTIFF

AND

ALBERT ALEXANDER AGGREY DEFENDANT

RULING

1. The plaintiff asks this court to allow an amendment of the Originating Summons dated 8/2/2023. The reasons are contained on the face of the notice of motion dated 4/12/2024 and a supporting affidavit of Beatrice Wamalwa sworn on the even date. It is averred that the defendant, during the pendency of the suit and despite existing court orders, changed the status of the suit land and transferred a portion of it to the proposed 2nd defendant, a wife; hence, the land occupied by the plaintiff now falls under LR No. 8699/22 a subdivision of LR No. 39058/1, transferred and registered in her name on 23/3/2022.
2. The applicant avers that the proposed amendments are necessary and not inconsistent with the claim, for they arise from the same chain of transactions, and that they will bring out the real issue in controversy with no prejudice to the defendant.
3. The applicant avers that on 28/2/2022, the court had issued an order to preserve the status quo but was defied by the respondent, who demolished her structures on the ground, leading to a contempt of court ruling on 5/10/2022.
4. Parties to suits have the right to amend their pleadings at any stage of the proceedings before judgment. Courts liberally allow for those amendments. However, there may be situations when a court may refuse to allow the amendment. They include where the same is inconsistent or new cause of action is being introduced, where vested or accrued legal rights will adversely be affected and/or if it will prejudice or create an injustice to the opposite party. See *George Gibuku Mbutia vs- Consolidated Bank of Kenya Ltd & Another* [2016] eKLR. The discretion to allow or refuse an amendment must,



however, be exercised judiciously and upon reasons rather than arbitrarily, humorously, and or facially. See Mbuthi -vs- Karanja (Civil Application No. E347 of 2023) (2023) KECA 1261 [KLR] (13th October, 2023) (Ruling). In Kenya Hotels Ltd -vs.- Oriental Commercial Bank Ltd [2018] eKLR, the court was of the view that whether or not to allow the amendment will also depend on the nature of the amendment. An application for amendment must also be brought within a reasonable time.

5. In Kyalo -vs.- Boyusuf Brothers Ltd (Civil appeal No. 38 of 1983), the court held that to allow a late amendment would amount to abuse of the court process. The purpose of an amendment is to facilitate the determination of the real question in controversy between parties.
6. The reasons necessitating the amendment in this matter have been given. The proposed party is also a necessary party to the suit. See Kingori -vs- Mega & Others [2002] 2 KLR 243. The application has also been brought on time. The defendant is the one who has also triggered the amendments by his acts of subdividing and transferring the land to his wife, the proposed defendant. I shall, therefore, allow the application. The amended Originating Summons is to be filed and served within 14 days from the date hereof. Costs in the cause.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 5TH DAY OF FEBRUARY 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Chemutai

Akwabi for Teti for applicant present

Thiga for defendant/respondent present

