



**Nzioka v Muhinja & 3 others (Environment & Land Case
E012 of 2022) [2025] KEELC 1214 (KLR) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1214 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE E012 OF 2022
LN MBUGUA, J
MARCH 12, 2025**

BETWEEN

MARGARET WANJIRU NZIOKA PLAINTIFF

AND

ANTONY NDUNGU MUHINJA 1ST DEFENDANT

ESTHER NJERI NJOROGE 2ND DEFENDANT

K. KAHIA MWANGI 3RD DEFENDANT

SAMUEL NJUGUNA MUNGAI 4TH DEFENDANT

RULING

1. This matter came up for hearing on 12.2.2025 when a question arose as to what pleadings were to be relied upon by the plaintiff at the trial. The 1st-3rd defendants contended that the hearing should proceed on the basis of the initial plaint, while the plaintiff averred that the hearing should proceed on the basis of the amended plaint which was apparently filed before the close of pleadings.
2. In a short ruling delivered on the same date of 12.2.2025, the court found that a determination on the status of the pleadings had to be made before the matter could proceed for hearing, hence this ruling. The advocates for the parties were also directed to canvass the issue in dispute through submissions.
3. The plaintiff filed submissions dated 14.2.2025 where he cited the provisions of Order 2 rule 13 as well as Oder 8 rule 1 (1) & (2) to submit that his pleadings are in order. It was argued that the defendants never filed an affidavit of service in respect of their statement of defence, hence there was no certainty as to when the time for filing a reply thereto actually lapsed, thus their amended plaint was filed on 12.6.2024 is properly on record.
4. It was further argued that when the matter came up for pretrial directions on 4.11.2024, the defendants never raised an issue on the amended plaint, hence the matter was set down for hearing.



5. This far, the plaintiff relies on the cases of Chelimo (Suing as the administrator of the Estate of Josiah Kandie Chelimo – Deceased) v Africa Inland Church of Kenya Trustees & 2 Others (2016) KEELC 1308 (KLR) and Yusuf Athman Hassan & another (Suing as beneficiaries Administrators of the Estate of Athuman Hassan Mwaliphunzo alias Athumani Gunia (Deceased)) v District Land Registrar, Kwale & another; Iddi A.M Ganguma & 6 others (Interested Parties) [2020] eKLR.
6. It is further argued that the defendants trespassed on the suit property in contravention of the status quo orders given by consent on 27.2.2024, prompting the plaintiff to file a contempt application dated 7.4.2024, in which she also sought orders for joinder of the 4th defendant. That to this end, counsel for the 1st- 3rd defendants also entered appearance for the 4th defendant, necessitating the filing of the amended plaint on 12.6.2024. That on 29.7.2024, the defendants advocate indicated to the court that they were not interested in filing a response to the amended plaint, thus the plaintiff went ahead to file her reply to defence statement and Counter claim on 6.8.2024.
7. The submissions of the defendant are dated 25.2.2025 where it is argued that the amended plaint dated 7.6.2024 and filed on 12.6.2024 was filed without leave of the court, and similarly relies on the provisions of Order 2 rule 13 of the Civil Procedure rules, but the defendant also cited Order 7 Rule 11 which addresses the issue of a counterclaim.
8. It was argued that that on 26.2.2024, the 1st and 2nd defendants filed a joint statement of defence and a counterclaim, while the 3rd defendant filed a statement of defence and that the said pleadings were served on the same date of 26.2.2024 as confirmed before the court on 27.2.2024. It is argued that the plaintiff had 15 days to file her reply to the defence and counter claim that is by 11.3.2024, the date when the pleadings closed. To this end, it was submitted that the amended plaint filed on 12.6.2024 as well as the reply to defence and counter claim filed on 6.8.2024 are improperly before the court.
9. It is further argued that the 4th defendant could only have been joined via a court order and not through a purported amendment of pleadings. It was also stated that at paragraph 14 of the plaint, the purported 4th defendant was identified as an agent of the 1st defendant, hence agent of a disclosed principle cannot be sued.
10. Thus the court has been urged to strike out the amended plaint dated 7.6.2024 as well as well as the reply to defence and counterclaim dated 6.8.2024.
11. Having regard to the rival arguments proffered herein, I find that the issue falling for determination is whether the two pleadings of the plaintiff that is; the amended plaint dated 7.6.2024 and the Reply to defence and the counterclaim should be struck out. In determining the said issue, the court will consider the following points; Whether the issue of the questioned pleadings was raised at the pretrial stage, whether the questioned pleadings should have been filed with leave of the court, whether the 4th defendant is properly sued and what are the appropriate orders to give in the circumstances.
12. On the question of whether the issue of status of pleadings was raised at the pretrial stage, the answer is in the short ruling delivered on 12.2.2025 and is in the affirmative that the question was made a subject of contest at the pretrial stage but remained undetermined until the date of hearing.
13. Was leave required to file the questioned documents?. To this end, the parties have cited the relevant law governing matters of pleadings which includes Order 2 rule 13, Order 7 rule 11 and Order 8 Rule 1 of the Civil Procedure rules which stipulate as follows;



Order 2 Rule 13

“The pleadings in a suit shall be closed fourteen days after service of the reply of defence to counterclaim, or, if neither is served, fourteen days after service of the defence, notwithstanding that any order or request for particulars has been made but not complied with”

Order 7 Rule 11

“Any person named in a defence as a party to a counterclaim thereby made may, unless some other or further order is made by the court, deliver a reply within fifteen days after service upon him of the counterclaim and shall serve a copy thereof on all parties to the suit”

Order 8 Rule 1

“A party may, without the leave of the court, amend any of his pleadings once at any time before the pleadings are closed”

Order 8 Rule 2

“Where an amended plaint is served on a defendant – (a) if he has already filed a defence, the defendant may amend his defence; and (b) the defence or amended defence shall be filed either as provided by these rules for the filing of the defence or fourteen days after the service of the amended plaint whichever is later”

14. The plaintiff contends that it is not clear as to when pleadings closed as there is no affidavit of service of the statement of defence and the counter claim. Indeed I have not seen such an affidavit. However, on 27.2.2024, counsel for the defendants informed the court that he had duly filed responses to the suit on behalf of the 3 defendants. That averment was not challenged by the plaintiffs. It is the view of this court that that was the point at which time started running towards the closure of pleadings. I am therefore in agreement with defence counsel that pleadings closed 14 days thereafter, though the court will count the said dates from 27.2.2024. Which ever is the date (26th or 27th February), the plaintiffs pleadings filed several months later on 7.6.2024 and 6.8.2024 are not properly on record.
15. At this point, I must point out that pleadings are the foundational documents upon which the claims of the protagonists are anchored along, and it is from pleadings that issues for determination flow from, See- Galaxy Paints Company Ltd v. Falcon Guards Ltd (2000) eklr and Daniel Otieno Migore v South Nyanza Sugar Co. Ltd (2018) eklr. What resonates from the above case law is that parties cannot proceed to the main hearing when the pleadings are in disarray in this matter.
16. Is the 4th defendant properly on record?. At paragraph 4.2 of the submissions of the plaintiff, it is averred that the plaintiff filed an application dated 7.4.2024 to join the 4th defendant and that counsel for the defendant even entered appearance for the said party. However, there are no records in this file as to how the 4th defendant was joined in these proceedings to warrant the amendments in the plaint.
17. The court records indicate that the plaintiff filed an application dated 8.4.2024 (and not 7.4.2024) seeking orders inter alia to join one Samuel Njuguna Mungai as the 4th defendant. That application was not prosecuted. How then was the trial to proceed when the said 4th defendant had not been invited to defend the suit?



18. In *Mobile Kitale Service Station v Mobil Oil Kenya Limited & another* [2004] eKLR, Warsame J. as he then was stated as follows in relation to invitation to defend a suit;

“We ought to respect the rules of engagement for they are promulgated to achieve justice to the rival parties: Summons is a judicial document calling a party to submit to the jurisdiction of the Court and if the party is not given that opportunity how else would he submit to the jurisdiction of the Court. In my understanding, order 4 and 5 of the Civil Procedure Rules are designed to enable the parties to follow certain procedures. The word used is “shall” which makes it mandatory to comply with the direction”.

19. The right to be heard is sacrosanct and is firmly embedded in the Kenyan Constitution at Article 50 (1) which provides that;

“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body”

20. This court would be abdicating its duties as a pillar of justice if it was to sanction a trial in which the fundamental rules of natural justice like a fair trial are trampled upon. To this end, I find that the 4th defendant is not properly sued before this court.

21. What orders should this court grant in the circumstances?. It is noted that the lifespan of this suit has been anchored on prosecution of various applications filed by the plaintiff, starting with the one filed contemporaneously with the suit dated 20.12.2022, which application was to be withdrawn on 27.2.2024 despite the fact that an amended version of the said application remained intact and is dated 21.11.2023!. The plaintiff still had another application dated 18.4.2023 where the 4th defendant is mentioned as the 3rd defendant, and the same was also sought to be withdrawn on the said date of 27.2.2024. That was not all, the plaintiff filed yet another application dated 3.4.2024 seeking orders inter alia to have their application dated 8.4.2024 heard on priority basis!. It is no wonder that with all these applications, the focus on the substantive issues relating to the rights and interests of the parties including the discovery process were left in disarray.

22. The provisions of Section 1A of the *Civil Procedure Act* stipulates that:

“(1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.

(2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).

(3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court”

23. It is quite clear that the plaintiff has failed to embrace the aforementioned provisions of law. Nevertheless, this court has a statutory duty to ensure that the Overriding Objectives set out in the above mentioned statute as well as in Article 159 of *the Constitution* are achieved. Further, the



provisions of Section 3A of the Civil Procedure Act empower this court to give orders which are necessary to meet the ends of justice.

24. To this end, the court will shepherd and steer the litigation process in this matter towards the right track which is the main hearing by applying Active Case Management principles and techniques. To this end, I make reference to the case of Lawrence Kinyua Mwai v Nyariginu Farmers Co Ltd & another [2019] eKLR (Mbugua J), where the court had this to say on Active Case Management;

“Active Case management enhances processing efficiency, promotes court control of cases, and provides judicial officers with the tools that may be used to dispose off a case efficiently. These techniques reduce delays and case backlogs, and provide information to support the strategic allocation of time and resources - all of which encourage generally better services from courts.

Active Case management is also the effort by courts to handle cases in such a manner that they are resolved fairly and as promptly and economically as is reasonable in the circumstances of the case. The fairness part can be found within the notion of procedural justice while the promptness and economics part of the case management can be found within the notion of the efficiency of justice. Efficiency of justice implies that justice is done at reasonable costs to the parties and the court and within a reasonable time, that is without an abnormal delay. Procedural justice concerns the fairness, consistency and the transparency of the processes by which progress in a case is made”.

25. In light of the above analysis, the court will not entertain applications whose net effect is to create Gordian knots which not only chokes the prosecution of the case but even the overall administration of justice.
26. I further make reference to the case of Alexander Khamasi Mulimi v Independent Electoral and Boundaries Commission & 2 others [2018] eKLR where the court analyzed at length the Question of Rules of Procedure Versus Substantive justice and stated that striking out pleadings should be done as a last result and in the clearest of cases.
27. Thus despite the fact that the 4th defendant was not properly joined in these proceedings, the court declines to strike out the amended plaintiff. Instead, the court proceeds to give the following orders.
1. The Reply to defence and Counter claim dated 6.8.2024 filed by the plaintiff is hereby struck out from the record.
 2. The Amended plaintiff dated 7.6.2024 is hereby admitted as a pleading of the plaintiff. The plaintiff is directed to take out summons to enter appearance upon the 4th defendant and serve him with all pleadings within 30 days from the date of this ruling, by 14.4.2025 failure to which the claim against the said defendant shall stand as dismissed.
 3. The 4th defendant is directed to file and serve his statement of defence by 28.4.2025 failure to which the suit shall proceed as an undefended claim against him.
 4. The 1ST-3RD defendants are directed to file and serve their amended pleadings (amended defence and counter claim if any) by 28.4.2025.
 5. The plaintiff is to file and serve his reply to defence and counter claim by 12.5.2025.
 6. Any pleading filed or served outside the given time lines shall stand as expunged.
 7. Any pending application is hereby marked as Dismissed.



8. The parties are directed to file and serve their paginated Trial Bundles containing their respective pleadings, comprehensive witness statements and documentary evidence by 19.5.2025, failure to which, such witness statement and documents shall stand as expunged.
9. The court makes a determination that the matter is not ready for hearing.

**DATED, SIGNED AND DELIVERED AT NANYUKI THIS 12TH DAY OF MARCH, 2025
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:

Otieno holding brief for Maosa for plaintiff

Muturi for defendant

Nancy Mwangi – Court Assistant

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