



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Yano v County Government of Elgeyo Marakwet (Environment & Land
Petition E001 of 2023) [2025] KEELC 1201 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1201 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT & LAND PETITION E001 OF 2023**

**L WAITHAKA, J
MARCH 6, 2025**

BETWEEN

PIUS KIPTUM YANO PETITIONER

AND

COUNTY GOVERNMENT OF ELGEYO MARAKWET RESPONDENT

RULING

Introduction

1. Vide a notice of motion application dated 30th October, 2024 the petitioner/applicant seeks leave of this court to amend his petition in the manner indicated in the draft amended petition annexed to the application.
2. As can be discerned from the grounds on the face of the application and the affidavit sworn in support thereof, the application is based on the grounds that there have arisen circumstances warranting amendment of the applicant's petition. In particular, the applicant seeks to plead the special damages he suffered on account of the actions of the respondent complained of.
3. The respondent opposes the application on the grounds that there was inordinate delay in bringing the application and that allowing the application would be prejudicial to it in that it may open floodgate of compensation cases against it, thereby negatively impacting on its ability to provide services to its subjects.
4. The respondent also deposes that it will be not be able to get its own independent report as the road in question is out of bounds for its officers.
5. Pursuant to directions given on 28th January 2025, the application was disposed off by way of written submissions.



Analysis

6. As pointed out herein above, the petitioner/applicant filed the instant application seeking leave of this court to amend his pleadings/petition in the manner indicated in the draft amended petition annexed to the affidavit he swore in support of the application.
7. The reason for seeking the amendment is to specifically plead the special damages he suffered on account of the activities of the respondent complained of.
8. The application is opposed by the respondent on the ground that there was inordinate delay in filing the application and that the applicant will suffer prejudice if the application is allowed.
9. The sole issue arising from the application, the response thereto and the submissions by the respective parties, is whether the petitioner/applicant has made up a case for being granted leave to amend his petition.
10. Concerning that issue, the petitioner has made reference to the case of *Praxides Musunji Bulemi v Commissioner of Prisons & 2 others* (2020) e KLR and submitted that a court can at any stage of proceedings allow a party to amend its pleadings so long as the same will not prejudice the other party.
11. The petitioner/applicant also submits that he has offered an explanation as to why he seeks to amend his pleadings, namely to plead the cost of restoration of the suit property to the state it was before the activities of the respondent complained about were done.
12. As to whether the respondent would be prejudiced if the application is allowed, the applicant submits that it would not. According to the applicant, allowing the application will ensure that ends of justice are met.
13. Terming the application incurably defective, lacking in merit, misconceived and hinged on wrong principles of law and procedure, an abuse of the court process, scandalous, frivolous, an afterthought and a delaying tactic, the respondent urges the court to dismiss it with costs to it as the evidence sought to be introduced through the application is already before the court.

Determination

14. The application before me being one for amendment of a Constitutional Petition, the applicable law is *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Mutunga Rules), particularly Rule 18 which provides as follows: -

“A party who wishes to amend its pleadings at any stage of the proceedings may do so with the leave of the court.”
15. In the case of *Praxides Musunji Bulemi v. Commissioner of Prisons & 2 others* supra, cited by the applicant in support of his application, the court, based on the decisions in the cases of *Humanity Action Knowledge Integrity in Africa Trust (Haki Africa) & 19 others vs. Attorney General & 3 others*; *Kenya National Commission on Human Rights (KNHCR) & 2 others (Interested Parties) (2020) e KLR*; *Mombasa Cement Limited vs. Speaker of National Assembly & 2 others (2016) e KLR*; and *Geyser International Assets Limited vs. Attorney General & 3 others (2019) e KLR* stated:-

“...From the above decisions, it should be clear that the court can, at any stage of the proceedings, allow a party to amend its pleadings, so long as the same will not prejudice the other party.”



16. In applying the principle espoused in the case of *Praxides Musunji Bulemi v. Commissioner of Prisons & 2 others supra*, to the circumstances of this case, where the Petition is yet to be heard and where the petitioner seeks to plead the special damages alleged to have been suffered on account of the actions of the respondent/the respondent's agents complained about, cognizant of the legal principle that requires that special damages be specifically pleaded and strictly proved, I am satisfied that the petitioner/applicant has made up a case for being granted the order sought.
17. The reasons given by the respondent for opposing the application are not cogent or good enough to warrant denying the applicant leave to amend his pleadings as the respondent will have a chance to amend his pleadings if need be to address the issue raised in the petitioner's amended pleadings. The argument that the respondent may not be able to tender evidence to counter the report to be relied in evidence by the petitioner is not a good reason for refusing the petitioner leave to amend his pleading. The issues raised by the respondent concerning its inability to access the suit property for purposes of carrying out an independent valuation are issues that the court is able to address, if moved to assist or make requisite orders in respect thereof.
18. The upshot of the foregoing is that the petitioner/applicant has made up a case for being granted leave to amend his petition which leave I hereby grant him as sought provided he shall pay the requisite court filing fees in respect of the amended petition within seven days of delivery of this ruling.
19. The respondent shall have fourteen (14) days to file an amended response to the petition.
20. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ITEN THIS 6TH DAY OF MARCH, 2025.

L. N. WAITHAKA

JUDGE

Ruling delivered virtually in the presence of:-

Ms. Kiptum for the Petitioner

Mr. Wafula for the Respondent

Court Assistant: Christine

