



**Angaza Real Estate Ltd & 2 others v Family Bank Ltd (Land Case
2 of 2023) [2025] KEELC 3609 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3609 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
LAND CASE 2 OF 2023
MN GICHERU, J
MAY 6, 2025**

BETWEEN

ANGAZA REAL ESTATE LTD 1ST PLAINTIFF

CHOSEN BUILDERS INVESTMENT LTD 2ND PLAINTIFF

MARTIN KAMAU 3RD PLAINTIFF

AND

FAMILY BANK LTD DEFENDANT

RULING

1. This ruling is on the notice of motion dated 10/9/2024. The Motion which is by the Plaintiffs is brought under Order 1 rules 3 and 10 (4), 8 rule 3 of the [Civil Procedure Rules](#) and all other enabling rules, regulations and provisions of the law.
2. The motion seeks the following orders.
 1. That leave be granted to the 3rd Plaintiff to amend the plaint in terms of the amended plaint as shown in the annexed draft amended plaint.
 2. That the draft amended plaint annexed herewith be deemed as duly filed upon payment of the requisite Court fees.
 3. That the costs of this application be in the cause.
3. The motion is based on three grounds and is supported by an affidavit sworn by the third defendant and dated 10/9/2024. The gist of the grounds and the affidavit is as follows.

Firstly, the 3rd Plaintiff wishes to amend the Plaint so as to determine all the issues in controversy. Secondly, the pleadings have already closed and the 3rd Plaintiff has to seek the Court's leave to further amend the plaint. Thirdly, some new issues have arisen after the close of the pleadings and there is need



to amend the plaint to include them. Finally, it is only fair that the 3rd plaintiff be allowed to amend the plaint, so that the dispute is resolved once and for all.

4. The motion is opposed by the defendant and in this regard Sylvia Wambani, the legal manager of the defendant has sworn a replying affidavit dated 12/9/2024. In the affidavit she responds as follows;

Firstly, the defendant did not enter into any agreement to release the tile deed for LR Mitubiri/Wempa Block 1/13457 to Angaza Real Estate without security. Secondly, the proposed amendment of the plaint is prejudicial to the defendant and untenable. Thirdly, converting the 2nd plaintiff to a defendant is unprecedented and contrary to order 1 rule 10 of the *Civil Procedure Rules*. Fourthly, if the application were allowed, it would create an absurdity whereby a party that initially issued summons to another would now be the one receiving summons. Fifthly, there is likely to be conflict of interest if the current plaintiff's counsel represents a party who he has designated as a defendant yet he is currently a plaintiff and represented by the same counsel who is seeking to push him to the opposite side as a defendant. Sixthly, the amendment would invalidate the original summons issued at the commencement of the suit and the remaining plaintiffs would lack capacity to issue summons to a party who was originally their co-plaintiff. Seven, the proposed amendments are so fundamental that they go beyond the mere clarification or correction to create a new case thus it would be better to withdraw the current suit and file a fresh one with a new claim and party structure. Eight, allowing the amendment would bypass important legal procedures and safeguards including the payment of fresh filing fees, issuance of new summons and opportunity for all parties to properly prepare their respective cases from the outset. Finally, this proposed amendment, if allowed, would create a dangerous precedent whereby parties can file incomplete pleadings, amend them halfway, change the suit fundamentally, create confusion and procedural unfairness, represent parties who were once on opposite sides and delay the expeditious hearing and conclusion of cases.

5. There is a further affidavit by the 3rd Plaintiff dated 15/9/2014 in which he adds the followings. Firstly, amendment of pleadings can be at any stage. Secondly, the amendment does not introduce new facts. Thirdly, at the time of applying for the loan the 3rd plaintiff was a director of both the 2nd and 3rd plaintiffs but this has since changed and he now claims from the 2nd plaintiff. Fourthly, the defendant's denial of release of LR No. Mitubiri/Wempa/Block 1/13457 to the plaintiff is double standards because the parties had such an agreement.

Fifthly, the issue of legal representation is immature at this stage and it will be addressed when the new summons are issued. Finally, the 3rd Plaintiff should not be denied the opportunity to plead his case as he wishes because costs can always be in the cause and procedural technicalities should not prevent the amendment sought.

6. Counsel for the parties filed written submissions dated 29/10/2024 and 20/2/2025. The issues raised by defendant's Counsel are as follows?

- i. Whether this Court should allow the proposed amendment?
- ii. Whether the law permits the conversion of a Plaintiff to a defendant within the same suit.
- iii. Whether such amendment and resultant conversion creates a conflict of interest in the legal representation.
- iv. What are the implications of the proposed conversion.

On the other hand, the Plaintiff's counsel identified only two issues for determination as follows.

- a. Whether the prayers sought should be granted.



b. Costs of the application.

Ideally, the plaintiff's submissions having been filed almost three months after the defendant's should have answered the issues raised by the defendant's Counsel. Be that as it may, I will make a ruling on each of the issues raised by the Counsel for parties.

7. On the first issue, I find that the Court should not allow the proposed amendment. Order 1 rule 10(1) and (2) [Civil Procedure Rules](#) provides instances when substitution and addition of parties is contemplated. They include the following;

- i. Where a suit had been instituted in the name of the wrong person as the plaintiff.
- ii. Where it is doubtful whether it has been instituted in the name of the right person. This is as per order 1 rule 10 (i) [Civil Procedure Rules](#).

Under Rule 10(2), the Court can only do the following;

- i. Order that the name of any party improperly joined, whether as plaintiff or defendant be struck out.
- ii. Order that the name of a person who ought to have been joined, whether as Plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court to effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

The above is the law relating to joinder and substitution. For the plaintiff's application dated 10/9/2024 to succeed, it must fit into the two narrow categories above. The tests are as follows.

- a. Has the suit been instituted in the names of the wrong persons as the Plaintiffs?
- b. Is it in doubt whether the suit was instituted in the name of the right person?

In the proposed amendment, the names are alright and there is no doubt that the suit was instituted in the names of the right people.

The proposed amendment fails the test in order 1 rule 10(1) and (2) [Civil Procedure Rules](#).

8. On the second issue, I find that the law does not allow the conversion of a Plaintiff into a defendant in the same suit.

Though the constitution says in Article 259 (c) that it should be construed in a manner that permits the development of the law among other ways, such development of the law should not result in an absurdity. It would be absurd to allow a plaintiff to become a defendant in the same suit. Who made the decision that the Plaintiff should become a defendant? Is it him or his Counsel? Can he not raise his issues in the dispute from the position that he first chose as a Plaintiff? What has brought this fundamental need to change his position? Those are some of the questions that his grounds in supporting of the motion should have addressed. With these and other relevant questions going without answers, the 3rd Plaintiff cannot be allowed to jump ship from the position of Plaintiff to that of defendant.

9. To answer the 3rd of the defendant's Counsel's issues, I find that were the Plaintiffs motion allowed, there would be conflict of interest. The confidentiality between client and advocate would be lost. The Plaintiff's counsel would be on the opposite side of the dispute with his former client now a defendant. This is not proper.



10. I think that it is not necessary to delve into the three (3) remaining issues of the implications of the proposed conversion and whether the Plaintiff's prayers ought to be granted because the foregoing findings have determined them.

11. For the above stated reasons, I find no merit in the motion dated 10/9/2024 and I dismiss it with costs to the defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 6TH MAY, 2025.

M. N. GICHERU

JUDGE

Delivered online in the presence of:-

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Absent

Defendant's Counsel – Mr. Onsare

