



**Ngambaa v Kimani (Environment & Land Case E102 of 2022)
[2025] KEELC 3696 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3696 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E102 OF 2022
LC KOMINGOI, J
MAY 5, 2025**

BETWEEN

HOSEA LENKANOMA NGAMBAA PLAINTIFF

AND

KENNEDY MUIRURI KIMANI DEFENDANT

RULING

1. This is the Ruling in respect of the Notice of Motion dated 17th September 2024. It seeks orders:
 - i. Spent
 - ii. That the Defendant/Applicant be granted leave to amend its Defence filed herein on 1st March 2023 as per the draft annexed hereto.
 - iii. That the amended defence annexed hereto be treated as the Defendant/Applicant defence and that the same be deemed as having duly filed and served.
 - iv. That the Plaintiff witness be recalled and allowed to be questioned by the defence counsel on the grounds adduced in the amended defence.
 - v. That the Defendant be allowed to call a witness advocate who is centrally involved in the transactions purportedly responsible for drafting the sale agreement and the memorandum of lending crucial to the determination of the suit.
 - vi. That the Plaintiff/Respondent be at liberty to file a reply to the defence if he so wishes.
2. The grounds are on the face of the Application. The Application is supported by the Affidavit of Kennedy Muiruri Kimani sworn on the 17th September 2024 and a Supplementary Affidavit sworn on the 9th December 2024.



3. The Application is opposed. There is a Replying Affidavit sworn by Hosea Lenkanoma Ngambaa, the Plaintiff/Respondent sworn on the 8th of November 2024.
4. On the 21st November 2024, the Court directed that the Notice of Motion be canvassed by way of written submissions.
5. I have considered the Notice of Motion, the Affidavits in support, the Response thereto, the Rival Submissions and the authorities cited. The issue for determination is whether the Application is merited.
6. Order 8 Rule 5 of the Civil Procedure Rules 2010 provides as follows:

‘For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.’
7. In the case of *Elijah Kipng’eno Arap Bii VS Kenya Commercial Bank Ltd* [2013] eKLR, the Court of Appeal in dealing with the issues of amendment held as follows;

“The law on amendment of pleadings in terms of Section 100 of the CPA, and Order VI A Rule 3 of the Repealed Civil Procedure Rules under which the application was brought was summarised by this Court, quoting from *Bullen and Leake & Jacobs Precedents of Pleadings – 12th edition*, in the case of *Joseph Ochieng’ & 2 others VS First National Bank of Chicago Civil Appeal No. 149 of 1991* thus; “The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that is the proposed amendments introduce a new case or new ground of defence it can allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the Plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the defendant would be deprived of his right to rely on Limitation Act.”
8. I find that the Plaintiff/Respondent will not be prejudiced by the amendment as he will have a chance to respond to the issues raised.
9. I find merit in this Application and I grant the orders sought namely;
 - a. That the Defendant/ Applicant is hereby granted leave to amend his Defence as per the draft annexed hereto.
 - b. That the amended defence be deemed as duly filed upon payment of the requisite fees.
 - c. That the Plaintiff’s witness be recalled for cross-examination by the Defence Counsel.
 - d. That the Defendant is hereby allowed to call the Advocate who drafted the sale agreement and the memorandum of lending as a witness in this case.
 - e. That the Plaintiff be granted leave to file a reply to the amended defence if need be.



f. That costs of this Application be borne by the Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF MAY 2025.

L.KOMINGOI

JUDGE

IN THE PRESENCE OF:

For the Plaintiff

For the Defendant

Court Assistant: Mutisya

