



Chege (Suing as a Personal Representative of the Estate of Julius Chege Kiongo - Deceased) ((Suing as a Personal Representative of the Estate of Julius Chege Kiongo - Deceased)) v Amaingu & 8 others (Environment & Land Case 108 of 2016 & 34 of 2019 (Consolidated)) [2025] KEELC 4331 (KLR) (9 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4331 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 108 OF 2016 & 34 OF 2019 (CONSOLIDATED)**

CK NZILI, J

JUNE 9, 2025

BETWEEN

**ESTHER NJERI CHEGE PLAINTIFF
(SUIING AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF JULIUS
CHEGE KIONGO - DECEASED)**

AND

JAMEN KIYAGI AMAINGU DEFENDANT

**AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 34 OF 2019**

BETWEEN

**ESTHER NJERI CHEGE PLAINTIFF
(SUIING AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF JULIUS
CHEGE KIONGO - DECEASED)**

AND

**BENJAMIN KARANGATHI , JOYCE WANGEE WAIHARO , HANNAH
WANJIKU (SUED AS AN ADMINISTRATORS OF THE ESTATE OF JAMES
WAIHARO KIONGO - DECEASED) 1ST DEFENDANT**

JAMIN KIYAGI 2ND DEFENDANT

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT 3RD
DEFENDANT**

THE LAND REGISTRAR TRANS NZOIA 4TH DEFENDANT



HON. ATTORNEY GENERAL	5 TH DEFENDANT
JANE AMALEMBA	6 TH DEFENDANT
BEATRICE KADENYI KIYAGI	7 TH DEFENDANT
EMILY SHUMI SAKWA	8 TH DEFENDANT

RULING

1. The plaintiff as the applicant seeks leave to amend the further amended amended plaintiff. The reasons are contained on the face of the application and in a supporting affidavit of Esther Njeri Chege, sworn on 4/3/2025. It is deposed that the defendants filed documents during the hearing of the suit, which raised new issues necessitating the proposed amendments. Even though leave was previously granted to amend the plaintiff, the applicant states that she erroneously omitted fundamental issues in the said pleadings. The applicant deposes that the intended amendment will bring the fundamental issues in controversy, though based on the same facts already pleaded, except the new reliefs, but more importantly, determine all the issues. The applicant deposes that the proposed amendments will not prejudice the respondents in any way, going by paragraphs 22A, 23, 24A, 24B, 24C, and 24D of Annexure EC-1. The proposed further amended amended plaintiff is attached as annexure EC-1.
2. The applicant relies on written submissions dated 14/3/2025, that the court has unfettered jurisdiction under Order 8, Rules 3, 5 of the Civil Procedure Rules, Sections 1A, 1B, 3A, 63(e) and 100 of the Civil Procedure Act. Reliance was placed on Eunice Chepkorir Soi -vs- Bomet Water Co. Ltd [2017] eKLR, Bosire Ongero -vs- Royal Medica Services Ltd [2015] eKLR and Eastern Bakery -vs- Castellino [1958] EA 461.
3. The application is opposed through a replying affidavit of Jamin Kiyagi Amaingu sworn on 17/3/2025, the 1st defendant/respondent, who set out the history of the three suits as consolidated, with the lead file being ELC No. 108 of 2016.
4. The 1st defendant/respondent deposes that the application is not clear on which file it relates to. Further, that the applicant does not state which documents filed by the defendants raised new issues necessitating the proposed amendment. As to paragraph 24A of the proposed further amended plaintiff, the defendant/respondent deposes that the applicant is avoiding Kitale ELC No. 108 of 2016, where she filed a defense in 2016, whose paragraph 3 raised the alleged new issues and attracted a reply to the defense alluding to the letter dated 30/7/1996. The 1st defendant/respondent deposes that her bundle of documents in the lead file included an affidavit sworn and lodged in Nairobi HC Civil Case No. 1523 of 1998, which at paragraph 4 thereof referred to the letter dated 30/7/1996, over the size of the land and attached the said letter as an annexure.
5. In view of the foregoing, the 1st defendant/respondent deposes that the applicant is misleading the court by saying that she became aware of the letter in 2024, so as to avoid the Limitation of Actions Act. The 1st defendant/respondent deposes that it is strange that the alleged letter and an original map have not been attached as annexures. The 1st defendant/respondent deposes that she takes it that the applicant is not challenging the letter dated 10/1/1997, to her late husband and neighbors before the Land Registrar concerning a District Commissioner's visit, as well as the report from the then District Officer II, confirming the locality of the two parties on the ground and the acreage of the two parcels of land.



6. The 1st defendant/respondent deposes that she has noted that there is no claim of fraud against the DC and his staff, who confirmed the acreages and the situation on the ground of the two parcels of land. Again, the 1st defendant/respondent deposes that she is doubtful that the fact of an original map can be termed as a new issue, allegedly established in 2024 since occupation, as pleaded, with effect from 1965. The 1st defendant/respondent deposes that her advocate has already cross-examined the applicant over all these matters, including the existence and withdrawal of Case No. 1523 of 1998, Kitale ELC No. 108 of 2016, the affidavit of 20/7/1998 and its annexures as some of the documents she is relying on before the court. The 1st defendant/respondent deposes that the applicant is now asking for compensation and allocation of land arising from and concerning a title deed that was canceled through an unchallenged gazette notice in 2014.
7. According to the 1st defendant/respondent, the application is a time-wasting gimmick. Further, it is deposed that the application relates to a cause of action arising from Namanjalala, yet the parcels of land are situated in Kapteret Sublocation, Suwerwa Location, Cherangany and not in Kwanza Constituency.
8. The 1st defendant/respondent relies on written submissions dated 17/3/2025. It is submitted that leave to amend is a judicial discretion based on the intent and purpose behind the proposed amendment and prejudice, likely to be suffered by the opposite parties as held in *Onyuna -vs- Anyango ELC O.S No. 63 of 2021 [2024] KEELC 6390 [KLR]* (24th September 2024) (Ruling), *Institute for Social Accountability & Another -vs- Parliament of Kenya & Others [2014] eKLR* and *Elijah K. Arap Bii -vs- KCB Ltd [2013]*.
9. It is submitted that the applicant is not being candid in view of the disclosures made in as early as 1998, as indicated in the consolidated bundle of documents and witness statements dated 12/5/2022, followed by cross-examination of the applicant in July 2024, based on pleaded defense and its documents. The 1st defendant/respondent submits that in view of the pleadings and the disclosed information, the application was filed late and was not in good faith as held in *Elijah Bii -vs- KCB Ltd* (supra); otherwise, it will deny her an accrued right or defense, based on the [Limitation of Actions Act](#).
10. The 1st defendant/respondent submitted that the amendment is intended to lay grounds for the introduction of a new and alternative claim against the 3rd defendant to allocate 6.6 Ha to the applicant, which she alleges her husband and her were denied ownership of in 1996, on the basis that the letter is a fraud, which cannot pass the test of Section 26 of the Limitation of Action Act, which defense was pleaded in paragraph 7 of the statement of defense dated 12/5/2022 by the 3rd and 4th defendants and in paragraph 17 of Jamin Kiyagi Amaingu's defense in Kitale ELC No. 108 of 2016.
11. Additionally, the 1st defendant/respondent submits that the claim being introduced of deprivation of land through a letter dated 30/7/1996, has been introduced over 28 years since it accrued and 9 years since Kitale ELC No. 108 of 2016 was commenced. The 1st defendant/respondent thus submits that the inordinate delay was being covered by untruthfully claiming knowledge of the letter and change of acreage in 2024, without saying how and when this happened. The 1st defendant/respondent submits that going by *Institute for Social Accountability & Another -vs- Parliament of Kenya & Others* (supra), the proposed amendment is not based on the actual state of facts, proper intent and purpose, is an afterthought, is in bad faith, mischievous and will be unjust.
12. The 1st defendant/respondent urges the court to be guided by *Diamond Trust Bank (K) Ltd -vs- John Wakaba Joseph & Another [2013] eKLR*, given that the applicant had an earlier opportunity to amend, there are no new issues, and that she should have pleaded all her case at once. Reliance was placed on *CBK Ltd -vs- Trust Bank Ltd [2000] 2 EA 365*. The 1st defendant/respondent submits that to condone



- the proposed amendments; the court would be opening up challenges on her title under Article 40(6) of the *Constitution*, which prejudice cannot be compensated in costs at the amendment stage, or at all, since the harm will have been done.
13. The 1st defendant/respondent relies on James Ochieng Oduol T/A Ochieng Oduol & Co. Advocates -vs- Richard Kuloba [2008] KECA 53 [KLR], on the proposition that an application for an amendment aimed at defeating a defense and to make up for negligent pleadings should not be allowed, unless there were exceptional circumstances as held in Motokov -vs- Auto Garage Ltd & Another [1971] EA 353 and Barclays Bank D.C.O. -vs- Shamsudin [1973] E.A. 451. Again, the 1st defendant/respondent submits that amendments by a negligent pleader should not be readily allowed, particularly if they will prejudice or were likely to cause injustice to the opposite party, to create or reframe a case, react after defense, cross-examination, or to build up a defense.
 14. Similarly, the 1st defendant/respondent submitted that in the case of Eunice Chepkorir Soi -vs- Bomet Water Co. Ltd [2017] eKLR, as relied upon by the applicant, pleadings had not closed, unlike in the instant suit where a reply by the defendant exists, there was no inordinate delay and costs were adequate and awardable.
 15. Additionally, the 1st defendant/respondent submitted that the proposed claim against the 3rd defendant is an abuse of the court process for seeking for reallocation of land in a settlement scheme, which allocation is outside the jurisdiction of the 3rd defendant, going by Part 1X of the *Land Act*.
 16. The issue calling for my determination is whether the applicant is entitled to leave further to amend her plaint at this stage of the hearing. The guiding principles on the exercise of discretion on amendment of pleadings were set out in Central Bank Ltd -vs- Trust Bank Ltd & Others (supra). The court said that it had to be satisfied that the application was made in good faith, that the amendment was material for the proper determination of the issues before a court; consideration has to be made if the proposed amendment will prejudice the respondent beyond compensation by way of costs; lastly, that the overriding consideration is whether the amendments are necessary for the just and final determination of the dispute between the parties.
 17. In addition, the court said that a mere delay was not a ground for declining to grant leave, unless such delay was likely to prejudice or cause injustice to the opposite party beyond monetary compensation by way of costs. In Institute for Social Accountability & Another -vs- Parliament of Kenya & Others (supra), the object of the amendment was said to enable the parties alter their pleadings so as to ensure that litigation between them is not conducted on a false hypothesis of the facts already pleaded or the relief, or remedy already claimed. Further, the court said that the power to amend makes the functions of the court more effective in determining the substantive merits of a case, rather than holding it captive to the form of the action and proceedings.
 18. Ordinarily, courts are liberal in granting leave to amend unless it is shown that the amendment will cause substantial injustice or irreparable loss to the other side or where it is a device to abuse the court process. See Daniel Ngetich & Another -vs- Krep Bank Ltd [2013] eKLR.
 19. In Evergreen Marine (Singapore) PTE Ltd & Another -vs- Petra Development Services Ltd (Civil Appeal E006 of 2020 [2023] KECA 1282 [KLR] (27th October 2023) (Judgment), a formal application was filed seeking to include special damages, after there had been closure of the respondent's case. The appellant was aggrieved by the same. On appeal, the contention was that the right to a fair hearing under Article 50 of the *Constitution* had been violated, the amendment was brought too late, and that the nature and character of the claim had been altered.



20. The court observed that apart from the fact that the amendments would appear that they were aimed at plugging holes in the respondent's case because of the cross-examination of the witnesses that had proceeded and that the stage at which they were introduced, it deprived the appellant of an opportunity to interrogate them. The court said that the purpose of pleadings is not only for the court to know what the matters are for adjudication but also serves as a means of informing the parties on the matters in controversy upon which they can prepare and present their respective cases.
21. From the afore cited case law, the decision, therefore, on whether or not to allow an amendment is dependent on the nature and extent of the amendment. It is discretionary in nature. The court must exercise the power judiciously and consider whether it is in the interest of justice based on the circumstances before the court to do so. The applicant must, therefore, demonstrate that the application is brought in good faith and also place before the court facts that would justify the court acting in her favor. See Lilian Wanja Muthoni Mbogo t/a Sahara Consultants & 5 others -vs- Assets Recovery Agency [2022] KECA 48 (KLR)
22. In Sadera & Others -vs- Kerema & Others (Civil Appeal 89 of 2019[2022] KECA 458 [KLR] (7th March 2023) (Judgment), the suit had been in the court corridors for many years. Several amendments had occurred in the course of its life, PW1 had testified. During a further hearing of the plaintiff's case, an application was filed in 2018 to amend the amended plaint dated 25/7/2012 and to join a 5th plaintiff. The respondents opposed the same terming it as a means of curing an otherwise lousy case. The trial court declined to issue leave on account of prejudice after the suit had commenced, meaning that it would start afresh with new facts and issues of law.
23. The court held that the phrase "for purposes of determining the real question in controversy between the parties", essentially means that a court should allow amendments to pleadings or take necessary steps to ensure the core dispute between the parties is clearly identified and adjudicated upon, meaning that the fundamental object of Order 8 Rule 5(1) of the Civil Procedure Rules is that the court should try the merits of the case that come before them and should consequently allow all amendments that may be necessary for determining the real question in controversy, provided it does not cause injustice or prejudice to the other party.
24. Regarding when an amendment should be sought and whether it may alter the cause of action, the court said that under Order 8 Rule 3(1) and (5) of the Civil Procedure Rules, it was within the permissible limits, so long as the cause of action arises out of the same facts or substantially the same facts as those already pleaded in the plaint sought to be amended. The court said that courts world over have been liberal in dealing with amendment of pleadings, citing with approval Life Insurance Corporation of India -vs- Sanjeev Builders Put Ltd & Another AIR 2018 SC 902, and Evans -vs- CIG Mon Cymru Ltd [2008] 1 WLR 2675 (24).
25. The court said that whether or not the details and the parcels of land mentioned in the intended amendments formed part of the parcels of land the subject to the dispute, was a matter of evidence during the trial and could not be said to be a new cause of action or to be prejudicial to the respondent, and so was whether the claim was sustainable. The court cited with approval Lloyds Bank PLC -vs- Rogers (No.2) [1999]3 EGLR 83, that what makes a new claim is not the newness of the claim, but the newness of the cause of action it involves.
26. In Mbuti -vs- Karanja Civil Appl. E347 of 2023 [2023] KECA 1261 [KLR] (13th October 2023) (Ruling), the court cited Kyalo -vs- Bayusuf Brothers CA No. 38 of 1983, that amendments should be allowed if they are brought within a reasonable time, because to allow a late amendment may cause injustice to the opposite party. The court cited Halsbury's Laws of England 4th Ed Vol 36(1) paragraph 76, that leave should not be granted if it is aimed at repairing an omission due to negligence



or carelessness, which may cause injustice to the other side. The court cited *George Gikubu Mbutia -vs- Consolidated Bank of Kenya Ltd & another* [2016] eKLR, on a situation where a court may refuse an amendment, such as where a new or inconsistent cause of action is being introduced, where vested interest or accrued legal right will be adversely affected, and where the prejudice or injustice cannot be adequately compensated by way of costs.

27. The 1st defendant/respondent has deposed on oath that the proposed amendments are not based on any new facts or material which the applicant was not aware of, going by the pleadings, list of documents and witness statements within her knowledge since 1998. The 1st defendant/respondent submitted that the amendment will prejudice or occasion grave injustice to her, for there is an accrued legal right and on defense based on the *Limitation of Actions Act*, which the applicant seeks to circumvent or cure by reframing, repairing, and reshaping her claim.
28. In *Joseph Ochieng & Others -vs- First National Bank of Chicago Civil Appeal No 149 of 1991*, the court said that one of the principles of the amendment is that the applicant should not be allowed to reframe his case or deprive the defendant the right to rely on the *Limitation of Actions Act*. In *CBK Ltd -vs- Trust Bank Ltd* (supra), the court was clear that an amendment should not cause prejudice or injustice to the opposite party beyond compensation by way of costs. The 1st defendant/respondent has invoked Section 26 of the *Limitation of Actions Act* and Article 40 (6) of the *Constitution* 2010, terming the damage, loss, or prejudice, if the amendment is allowed, irreparable and a grave injustice.
29. In *the German School Society & Another -vs- Ohany & Another* (Civil Appeal 325 and 342 of 2018) (consolidated) [2023] KECA 894 [KLR] (24th July 2023) (Judgment), the court cited *Gitahi & Another -vs- Maboko Distributors Ltd & Another* [2005] 1EALR 65, that a court of law has to decide a case based on the facts and evidence before it, as well as the law.
30. The proposed amendments in no doubt relate to a cause of action based on fraud alleged to have occurred in 1996, based on a letter dated 30/7/1996. Discovery of the letter is alleged to have taken place in 2024. A cause of action is defined as an action on the part of the defendant that gives the plaintiff a reason to complain. See *DT Dobie & Company (Kenya) Ltd -vs- Joseph Mbaria Muchina & Another* [1982] KLR.
31. Sections 2(b), and 3(1) & (2) of the *Public Authorities Limitation Act* and the *Government Proceedings Act*, have timelines within which to sue the government and its departments. A claim founded on tort and contract can only be brought within 12 months and 3 years, from the date the cause of action accrued, as held in *Benja Properties Limited -vs- Syedna Mohammed Burhannudin Sahed & 4 others* (Civil Appeal 79 of 2007; [2015] KECA 457 (KLR)); otherwise, it will lapse.
32. There is undisputed evidence that the applicant's late husband had filed and withdrawn a suit in 1998 over the suit land. In *Sea Angel Service Station Ltd -vs- Abdul Civil Appeal No. E126 of 2022* [2025] KECA 172 (KLR) (7th February 2025) (Judgment), the court cited *Rift Valley Railways (Kenya) Ltd -vs- Hawkins Wagunza Musonye & another* [2016] KECA 213 (KLR) and *Pius Kimaiyo Kangat -vs- Co-operative Bank* [2017] KECA 152 [KLR] and *Gathoni -vs- KCC Ltd Civil Appeal No, 122 of 1988*, that the law on limitation of actions is intended to protect defendants against unreasonable delay in bringing suits against them and the statute expects a plaintiff to exercise reasonable diligence and to take reasonable steps in his interest. In *Diana Katumbi Kiio -vs- Reuben Musyoki Muli* [2018] KECA 860 (KLR)], the court held that a claim for recovery of land or based on contract has to be filed within 12 years and 6 years, respectively, as per Section 7 of the *Limitation of Actions Act*.
33. In this application, the 1st defendant/respondent deposes and submits that the applicant knew of the alleged fraud much earlier than 2024 and was bringing the amendment 28 years after the discovery and



8 years after the lead file was commenced. In *Edco Africa Ltd -vs- Kirigia & Another* (Civil Appeal E730 of 2023 [2025] KECA 107 [KLR]) (24th January 2025) (Judgment), the court observed that under Order 2 Rule 4 of the Civil Procedure Rules, a defendant ought to plead on limitation in a statement of defense. In *Derry Alias Margaret Atieno Kasyoki -vs- Lwango* (Civil Appeal E221 of 2022) [2025] KECA 339 [KLR] (21 February 2025 (Judgment), the court took the view that continued occupation constituted trespass, hence the suit was not time-barred. Further, in *Sila -vs- Attorney General* (Civil Appeal 224 of 2019) [2025] KECA 398 KLR (21 March 2025) (Judgment), the court said a defendant must plead limitation if he wants to rely on it, as held in *Kutima Investment Ltd -vs- Muthoni Kihara & Another* [2015] eKLR.

34. The court further cited *Mohammed Fugicha -vs- Methodist Church* [2016] eKLR, that the primary purpose of pleadings is to communicate with an appreciable degree of certainty and clarity, the complaints that a pleader brings to court and to serve as a sufficient notice to the party impleaded to enable him to know what case to answer.
35. Applying the foregoing case law, parties are bound by their pleadings. The court finds that the issues being raised in the intended pleading are not new and were within the knowledge of the applicant before 1998 and later, by 2016 when the lead suit was filed. The letter said to have been discovered in 2024 is not new at all. It was disclosed to the applicant as early as 1996. The applicant knew about the interference with the suit land. The plea on limitation of action was equally raised by the 1st defendant/respondent and responded to by way of a reply to the defense. The applicant now wants to circumvent the plea and amend her pleadings to deny the 1st defendant/respondent that right.
36. As held in *Sila -vs- Attorney General* (supra), the appellant had only raised a plea of limitation during cross-examination, a party has to plead such defense under Order V1 Rule 4(1) of the Civil Procedure Rules as per Civil Procedure Rules [1998]. In *Kabogo -vs- Gitau* (Civil Appeal 82 of 2019) [2025] KECA 193 [KLR] (9th February 2025) (Judgment), the court cited *Kenya Cargo Handling Services Ltd -vs- David Ugwang* [1985] KLR 593, that the mischief against all limitation laws is directed at the delay in commencing legal proceedings, for the delay may lead to an injustice. Further, the court observed, guided by *Jared Iqbal Abdul Bahman & another -vs- Bernard Alfred Wekesa Sambu & another* [2001] KECA 329 (KLR), that in a claim for land based on alleged fraudulent registration, time begins to run when the said registration is discovered and the time limitation is 3 years.
37. In my considered view, the intended amendment is not only being mischievously sought, but also too late without disclosure of material facts. It is also being made in bad faith on a cause of action that is unsustainable. The applicant was extensively cross-examined on all those issues she is now seeking to address through the proposed amendments.
38. To allow such an endeavor would, therefore, re-open the issues so as to repair, reframe, and or reshape the suit. The application dated 4/3/2025 is due for dismissal. It is so dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 9TH DAY OF JUNE 2025.

In the presence of:

Court Assistant – Laban

Mr. Teti for the plaintiff present

Mr. Mwenesi for the 1st defendant present

Ms. Lagat for Chilaka for the 3rd - 5th defendants present



HON. C.K. NZILI
JUDGE, ELC KITALE.

