



REPUBLIC OF KENYA



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

**Shire v Omar & 5 others (Environment and Land Case  
63 of 2006) [2025] KEELC 4369 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4369 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND CASE 63 OF 2006**

**EC CHERONO, J**

**JUNE 5, 2025**

**BETWEEN**

**HADIJA SHIRE ..... PLAINTIFF**

**AND**

**KHADIJA OMAR ..... 1<sup>ST</sup> DEFENDANT**

**ZAINAB UMAR ABDI ..... 2<sup>ND</sup> DEFENDANT**

**JONATHAN NYONGESA NAMULALA ..... 3<sup>RD</sup> DEFENDANT**

**THE COUNTY GOVERNMENT OF BUNGOMA ..... 4<sup>TH</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION ..... 5<sup>TH</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. Vide a Notice of Motion dated 17<sup>th</sup> February 2025, the plaintiff/Applicant seeks the following orders;
  - a. This Honourable Court be pleased to grant leave to the Plaintiff/Applicant to further re-Amend her plaint in terms of the draft re-amended plaint annexed to the affidavit in support of the instant application.
  - b. The draft amended plaint in (a) above be deemed as properly filed subject to the payment of the requisite Court fees.
  - c. Costs of this application be in the cause.
2. The application is premised on ten grounds shown on the face of the said application supported by the affidavit of the Applicant sworn on even date. The application is opposed by the 1<sup>st</sup> & 2<sup>nd</sup> Respondents



through the Firm of M/S Omundi Bw'Onchiri Advocates vide grounds of opposition dated 4<sup>th</sup> March, 2025

3. According to the plaintiff/Applicant, she impleaded the Defendants in the instant matter over the illegal and unlawful creation of land in front of her parcel of land. She stated that whereas she had sued the 1<sup>st</sup> & 2<sup>nd</sup> Defendants as owners of Land parcel NO. Bungoma/Municipality/854, the original Allottee was Elizabeth Wafula alias Elithabeth Wafula and thus, the need to add her as a party. The plaintiff/Applicant further deposed that whereas the plaint had been amended to remove the other plaintiffs, the proposed re-amended plaint seeks to re-introduce the other plaintiffs who were removed from the suit herein and that the dispute remains the creation of Bungoma/Municipality/854 in front of Bungoma/Municipality/398. She stated that in view of the aforesaid matters, there is need to confine the dispute on the two portions which necessitates the removal of the 3<sup>rd</sup> Defendant from the proceedings herein and therefore, the need for the re-amendment of the plaint so that the plaintiff's claim is pleaded with clarity and precision. He stated that the Respondents will not be prejudiced as they will have an opportunity to amend their defence, if need arise.
4. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed grounds of opposition dated 4<sup>th</sup> March 2025 and raised the following 7 grounds;
  - a. That the application is frivolous, vexatious, scandalous and an abuse of the provisions of Order 8 of the Civil Procedure (Amendment) Rules 2020.
  - b. That great prejudice will occasion to the 1<sup>st</sup> and 2<sup>nd</sup> defendants if the orders sought are granted.
  - c. That this case has been pending in court for the last 20 years.
  - d. That the law and procedure does not allow re-amendment as sought.
  - e. That this application is merely brought to counter the further witness statement by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.
  - f. That the orders sought are time barred.
  - g. That litigation has to come to an end.

### **Plaintiff/applicant's Submissions**

5. The Plaintiff/Applicant through the Firm of M/S Anwar & Co. Advocates submitted on the following four issues;
  - i. Whether the amendment is necessary and thus the need to seek leave.
  - (ii) whether there is inordinate delay in seeking to amend the plaint.
  - (iii) Whether prejudice will be occasioned to the 1<sup>st</sup> & 2<sup>nd</sup> Defendants if leave is allowed.
  - (iv) Whether the application dated 17<sup>th</sup> February 2025 has merit and what orders should the court thus grant.
6. On the first issue, the learned Counsel submitted that from the plaint filed herein, the dispute relates to the creation of Bungoma/Municipality /854 in front of Bungoma/Municipality/398. He stated that land parcel NO. Bungoma/Municipality/398 is registered in the name of the plaintiff while LR NO. Bungoma/Municipality/854 is registered in the names of the 1<sup>st</sup> & 2<sup>nd</sup> Defendants who bought from Elizabeth Wafula alias Elithabeth Wafula- the original allottee and therefore, there is need to include in these proceedings. At the same time, it was submitted that the 3<sup>rd</sup> defendant has no interest in



Bungoma/Municipality/854 and thus the need to remove him from the proceedings herein as he is not a necessary party. The Plaintiff/Applicant also submitted that whereas particulars of fraud is set out as against the defendants, the same is not pleaded with particularity as regards the 8<sup>th</sup> defendant thus, the need for the amendment. He cited the case of *George Olel Mung'au & 5 Others v Joseph Situma Matafari & 10 Others* (2022) eKLR.

7. On whether there is inordinate delay in bringing this Application, the learned Counsel answered in the negative and argued that as per the consent of the parties recorded on 2<sup>nd</sup> December 2024, this case was agreed to start de novo meaning that there is no evidence on record that can be used to say that there is delay in bringing the instant application for amendment. He cited the following cases and authorities; *George Olel Mung'au & 5 Others v Joseph Situma Matafari & 10 Others* (supra), *Central Bank Limited v Trust Bank Ltd* (200) 2 E.A 365 cited in *Andrew Ouko v Kenya Commercial Bank Ltd & 3 Others* (2014) KLR, Section 100 CPR.
8. On whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendants will suffer prejudice, the Learned Counsel answered in the negative and submitted that with the consent to start this suit de novo, no evidence has been taken and the defendants have an opportunity to cross-examine the plaintiff on her evidence and that the defendants will also have an opportunity to amend their defence and thus, they will not suffer any prejudice. He submitted that the proposed amendment will not change the cause of action and cited the case of *St. Patrick's Hill School Limited v Bank of Africa Kenya Limited* (2018) eKLR
9. In conclusion, the Applicant submitted that the application herein is merited and urged this court to allow the same
10. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant through the Firm of Omundi Bw'Onchiri Advocates filed submissions dated 2<sup>nd</sup> April 2025 and argued that this suit has been pending in court since the year 2006 and from the court record, it is clear that the matter proceeded and the plaintiff closed her case but on 22/9/2022, the plaintiff applied to re-open the case and re-call the County Surveyor and physical planner and when the matter came up for further hearing on 20/01/2025, the plaintiff sought for more time to file witness statements only to come up with the present application. He submitted that though the plaintiff has a right to apply for amendment of her claim, she cannot be permitted to make application after another without regard to the rights of the defendants whom she brought to court in 2006. He submitted that the actions by the plaintiff amount to undue delay on her part which causes prejudice to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' right who have attended court endlessly since 2006 to date.

### **Legal Analysis And Decision**

11. I have considered the application dated 17/02/2025, the supporting affidavit, the grounds of opposition, submissions by the parties and the relevant law. Order 8 Rule 3 *CPR* provides as follows;

" Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the  
3(1) following provisions of this rule, the court may at any stage of the proceedings,  
on such terms as to costs or otherwise as may be just and in such manner as it  
may direct, allow any party to amend his pleadings.

(2) —

(3) An amendment to correct the name of a party may be allowed under subrule  
(2) notwithstanding that it is alleged that the effect of the amendment will be  
to substitute a new party if the court is satisfied that the mistake sought to be  
corrected was a genuine mistake and was not misleading or such as to cause any



reasonable doubt as to the identity of the person intending to sue or intended to be sued.”

12. It is trite that courts have the power to allow amendment of pleadings which may be exercised at any stage of the proceedings before judgment. In Bullen and Leake & Jacob’s precedents of pleading, 12<sup>th</sup> Edition, the Learned Author stated as follows concerning amendment of pleadings;

“The power to 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 if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of substantially different character which could more conveniently be made the subject of a fresh action.”
13. In the present application, the Plaintiff/Applicant is seeking leave to further Amend the plaint in terms of the draft further amended plaint annexed to the supporting affidavit. The application is opposed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on grounds that they will be prejudiced since the case has been in the courts for the last 20 years
14. In the case of *Central Bank Ltd v Trust Bank Ltd (2000) 2 E.A 365*, the court held;

“ The overriding consideration in applications for leave is whether the amendments are necessary for the just determination of the controversy between the parties. Likewise mere delay is not a ground for declining to grant leave. It must be such delay as is likely to prejudice the opposite side beyond monetary compensation in costs. The policy of the law is that amendments to pleadings are to be freely allowed unless allowing them the opposite side would be prejudiced or suffer injustice which cannot be properly compensated by costs.”
15. I agree with the holding in the above decision. Consequently, I find the Notice of Motion application dated 17<sup>th</sup> February 2025 merited and the same is allowed in the following terms;
  1. The plaintiff/Applicant to further amend the plaint in terms of the draft annexed to the affidavit in support of the application herein within three days from the date of this Ruling/Order
  2. Since the pleading are now open, the Defendants shall be at liberty to further amend file and serve their defence in accordance with the [Civil Procedure Act](#) and the Rules made thereunder.
  3. The Plaintiff/Applicant to pay the 1<sup>st</sup> and 2<sup>nd</sup> Defendants thrown away costs of the said application at Kshs. 10,000/ within 14 days from the date of this Ruling/Order.
  4. The plaintiff to take pragmatic steps to prosecute this case within eight (8) months from the date of this Ruling/Order failing which the suit shall stand dismissed for want of prosecution.

**DELIVERED, READ AND SIGNED AT BUNGOMA THIS 05<sup>TH</sup> DAY OF JUNE, 2025**

**HON. E.C.CHERONO**

**ELC JUDGE**

In the presence of;



1. Mr. Anwar for the Plaintiff/Applicant.
2. 1<sup>st</sup> & 2<sup>nd</sup> Defendants/Advocate-absent
3. 3<sup>RD</sup> Respondent/Advocate-absent.
4. Bett C/A.

