



**Progressive Heritage Limited & another v Mbito alias Chairman & 4 others
(Suing on their own behalf and on behalf of all 242 members living and in
possession of Kwale/Tiwi Beach Block/ 78 to 140) & another (Environment and
Land Case E020 of 2022) [2025] KEELC 5834 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5834 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
ENVIRONMENT AND LAND CASE E020 OF 2022**

LL NAIKUNI, J

JULY 11, 2025

BETWEEN

PROGRESSIVE HERITAGE LIMITED 1ST PLAINTIFF

LATE JONAH STEPHEN NG'ANG'A 2ND PLAINTIFF

AND

**RAMADHAN MBITO ALIAS CHAIRMAN, SAIDI MWATSULUKA, MWIRI
ALI JUMA, HAMISI ALI GAKURYA AND RASHID ALI GAKURYA (SUING
ON THEIR OWN BEHALF AND ON BEHALF OF ALL 242 MEMBERS
LIVING AND IN POSSESSION OF KWALE/TIWI BEACH BLOCK/ 78 TO
140) 1ST DEFENDANT**

**NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY 2ND
DEFENDANT**

RULING

I. Introduction

1. What is before this Honourable Court for its determination is the Ruling regarding the Notice of Motion application dated 18th September 2024. It was brought by the 1st Defendants/Applicants herein under the dint of the provisions of Sections 1A,1B and 3A of the Civil Procedure Act, Cap. 21, Order 1 Rules 8, 12,13, and 16, Order 8 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law.
2. Upon service, the application was opposed by the Plaintiff/Respondent through filing of a Replying Affidavit sworn by the Plaintiffs Director and whose contents have been stated herein below.



II. 1st Defendants/Applicants case

3. The 1st Defendants/Applicants sought for the following orders:-
 - a. That the Applicants hereinabove named be granted leave to sue in the Counter - Claim on their own behalf and on behalf of all members living on the parcel of land reference no Kwale/Tiwi Beach Block/78 to 140 and all those members living on the said parcel be joined as Applicants in this suit
 - b. That the Plaintiff be granted leave to amend the Defence and Counter - Claim and joint The Land Registrar Kwale and the National Land Commission as Defendants together with 242 other Applicants in this suit as set out in the amended Defence and Counter - Claim annexed herein
 - c. That fresh summons to enter appearance do issue to the said Land Registrar Kwale, THE DIRECTOR LAND ADMINISTRATION and THE NATIONAL LAND COMMISSION
 - d. That the costs of this application
4. The application was based on the grounds, testimonial facts and the averments made out under the 18 Paragraphed Supporting Affidavit sworn HAMISI ALI GAKURYA, by one of the Applicants herein together with three (3) annexures marked as “HGA - 1 to 3” annexed thereof. He averred that:-
 - a. The deponent was one of the applicants swearing the affidavit on his own behalf and on behalf of the rest of the Applicants and as a representative of the 242 members living on Plot number Kwale/Tiwi Beach Block/78 to 140.
 - b. The suit property belonged to his forefathers since time immemorial and they were born and raised therein. That the said possession has been uninterrupted save for the suit herein which was filed in year 2022.
 - c. Upon investigation after being served with the court documents, the Applicants established that Mr. Vaugh a white settler allegedly leased the suit property as Kwale/Tiwi Beach Block/78 to 140, upon expiry the lease was allegedly granted to the Plaintiffs without the knowledge of the Applicants.
 - d. It was illegal, unregular and unfair for the National Land Commission, the Ministry of land, the Chief Land Registrar and the Land Registrar-Kwale to allocate and grant a title document to strangers.
 - e. Further that the said government bodies failed to conduct due diligence at the time of granting the title documents issued to the plaintiffs while the applicants were in possession of the suit parcel. That upon the title reverting to the National Land Commission, the same ought to have been registered in the names of the Applicants who are in possession of the same.
 - f. It would be proper for the Land Registrar, Kwale, the director land administration and the National Land Commission to be joined as Defendants and for all the 242 people living on the suit property to be joined as applicants and for the counterclaim to be amended as per the attached copy.
 - g. The Plaintiffs were well aware of the Applicants occupation of the suit property and so was National Land Commission but despite this still went ahead to register the land in the name of the Plaintiffs. That it would be prejudicial if the court disallowed the application as it



was necessary for the court to have all material facts placed before it in order to render a just determination.

III. The Responses by the Plaintiffs/Respondents

5. The application was opposed through a Replying Affidavit sworn by MICHAEL NJOROGE NG'ANG'A a Director of the 1st Plaintiff and a Joint Administrator of the 2nd Plaintiff who stated as follows that:-
- a. He had the authority of the Plaintiffs to swear this Affidavit on their behalf.
 - b. He opposed the enjoinder of the Intended Defendants to this suit for reason that the Applicants have moved the Court too late in the day despite them being aware of the existence of the suit since its inception as averred in Paragraphs 2 and 3 of the Supporting Affidavit.
 - c. The Applicants have never been in physical occupation of the suit and any claims that they have been in physical occupation of the subject properties is an afterthought and is collusion between the Applicants and the 4th Defendant their representative herein who had participated in the proceedings all along in a desperate attempt to further delay and or reopen the hearing and determination of the defence case.
 - d. The deponent stated further that the Applicants herein have never been in physical possession of the suit property and they vacated the suit property and stopped the mining activities they were doing therein after interim.
 - e. The orders were issued by this Court and the O.C.S. Kwale Police Station has been ensuring compliance with the orders issued on 16th December 2022.
 - f. Also that the Applicants had failed to demonstrate by material evidence any evidence of being in physical possession or occupation or undertaking any form of agricultural activities.
 - g. The Applicants herein were well represented by Counsel in the matter and parties complied with Pre-trial directions and a hearing date issued and the issue of Intended Defendants never arose, which was a clear demonstration of the delaying tactics by the Defendants in delaying the suit herein.
 - h. It was deposed that the suit was part heard and it was scheduled for hearing of the defence case on 23rd September 2024 when the application herein was filed which had further delayed the suit in addition to the 1st to 5th Defendants seeking numerous adjournments when the matter was scheduled for defence hearing specifically on 24th January 2024.
 - i. When the matter came up for defence hearing but was adjourned at request of the 1st to 4th Defendants and on 5th March 2024 where the 1st to 5th Defendants' Advocate on record at the time sought leave of the Court to make a formal application to cease acting as she could not trace her witnesses.
 - j. On 13th May 2024, the 1st to 5th Defendants changed their Advocate on record which has further delayed the hearing of the defence case.
 - k. It was stated that the amendments could only be allowed after close of pleadings when it was necessitated solely by drafting errors and also where the intended amendments do not introduce a different claim/cause of action and add new parties which would fundamentally change the nature of the original claim and re - open the entire suit afresh and subject the recalling of the Plaintiffs. In the event the application is allowed, it will greatly prejudice the



Plaintiff who had already closed his case and had spent considerable time and resources in prosecuting the suit herein in ensuring there is no further mining activities and encroachment by ensuring there is adequate security on the suit properties in addition to not fully utilize the suit property to derive livelihood.

- l. According to the deponent, the Intended Defendants were non-existent, busy bodies and persons who have no interest on the suit properties as alleged in the application and if they exist, they was being used by the 4th Defendant to abuse the Court processes and waste precious judicial time by dragging this case further.
- m. Further confirm that the Intended Defendants did not exist, some of them never have identification numbers and they have not attached copies of the Identity Cards to confirm that indeed the said persons exist and that they were all from the same locality where the suit property was situated as averred in the application, there were no telephone numbers and had not appended their signatures authorizing the 4th Defendant to act for them or authorizing the application herein.
- n. Also that a Counter - Claim could only filed by a Defendant to a suit and not by strangers to the suit, thus the Applicants had no legal recourse in the current suit and the draft Counter - Claim was null and void ab initio.
- o. The deponent stated that the Plaintiffs were the legal registered proprietors of all those parcels registered as Land Reference Numbers Kwale/Tiwi Beach Block/78 to 140 measuring approximately 104.4 Ha as per the attached Certificate of Lease and that the lease was for 99 years from 1st August 1979 and the lease would be subject for renewal on or around the year 2078.
- p. It was stated that the Plaintiffs purchased and acquired the suit properties legally and procedurally through the late JONAH STEPHEN NG'ANG'A in the late 1970's prior to the establishment of the National Land Commission an Intended Defendant who had no role to play in the leases of the suit properties which were for 99 years from 1st .August 1979. That the role of National Land Commission was only involved in renewal and extension of leases that have expired and in the current suit properties, the said commission would only be involved on or around the year 2078 and their participation in the suit herein was of no value to these proceedings but a strategy by the Applicants to add irrelevant parties who would not assist the Court in determining the issues in dispute.
- q. The Director of Land Adjudication had no role or value to add in the proceedings herein since the suit properties was not adjudication properties and the adjudication office was not involved in demarcation and/or allocation of leasehold properties and their participation in the suit herein was of no value to these proceedings but a strategy by the Applicants to add irrelevant parties who would not assist the Court in determining the issues in dispute. That the Applicants had not demonstrated that they tried to legally apply to the National Land Commission to acquire the lease to the suit properties and their application was declined as averred and if at all they did apply to the National Land Commission, their application was declined and their recourse was not through this suit.
- r. Lastly that the application herein was an abuse of the Court process and a waste of precious judicial time and the same should be dismissed with costs.



IV. The Further Affidavit by the Plaintiffs/Applicants

6. Upon obtaining the leave of Court, the Plaintiffs/Applicants filed a 21 Paragraphed Further affidavit sworn on 9th December 2024 by HAMISI ALI GAKURYA one of the applicants. He averred that:-
- a. Contrary to the scandalous, frivolous and vexatious allegations, the application was properly before the Court seeking to have the matter determine to finality by joining all parties pertinent to the suit and directly affected by the Plaintiffs/Respondents claim.
 - b. By opposing the joinder, the Respondents clearly portrays bad faith in having the matter concluded justly and to finality and avoid multiplicity of suits.
 - c. Indeed, any denial of the Applicants to access justice was manifestly detrimental to all the Defendants/ Applicants seeking joinder and their entire lineage who not only depend on the suit property for shelter, but also for sustenance, burial and generational identity.
 - d. The joinder will bring visibility of locals now terms “Squatters” their own ancestral land enabling them access justice and participate in their sustenance home and ancestral.
 - e. To ensure access to justice, right to fair hearing and fair trail all core and directly affected parties to the suit must have their day in Court in their own representation.
 - f. The joinder was meant to serve and fulfil the same purpose. It was unfair for the Plaintiff/ Respondent to insist for the matter to proceed only with four persons they chose to sue in the absence of all the other parties who were in occupation and used the suit land.
 - g. Any denial of the Applicants to access justice was manifestly detrimental to all of the Defendants/Applicants seeking the joinder of parties and their entire lineage and who depend on the suit land as their shelter and sustenance, burial and generational identity.
 - h. It was stated that re - opening a part-heard was not detrimental to any party if the same settles the matter in question by bringing in consolidated evidence on issues to assist court in making a fair and conclusive determination
 - i. Further that the application has been brought under Order 1 Rules 3 and 10 which allowed for any Defendant to be joined to a suit at any time where the relief sought arises from a similar transaction jointly or severally and the joinder would enable the Court effectually and completely adjudicate upon and settle all questions involved in the suit.
 - j. The intended additional Defendants were parties whose presence before Court is necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in this suit.
 - k. That photos had been attached in the previous affidavit and in the current one in a bid to demonstrate the occupation as there was the danger of evicting the applicants in the event that the suit proceeds without their input.
 - l. Further that the provision of Article 159 (2) (d) of *the Constitution*, Section 146 (4) of the *Evidence Act*, Cap.80 and Order 18 Rule 10 of the Civil Procedure Rules, 2010 allow for instances of re - opening cases and recall of witnesses to allow for cases to be heard and determined on merits.
 - m. Therefore, the fears by the Respondents was unfounded as the joinder shall benefit both parties to participate fully on merits and to a fair determination.



- n. The Applicants urged the Court to allow the application as prayed.

V. Submissions

7. On 18th February 2025 while all the parties were present in Court, they were directed to have the Notice of Motion application dated 18th September 2024 be disposed of by way of written submissions. Pursuant to that, all the parties complied and the Honourable Court reserved a date to deliver its Ruling accordingly.

A. The Written Submissions by the Applicants

8. Through the Law firm of Messrs. Shariff Ramadhan & Company on behalf of the Applicants filed their written submission. The Learned Counsel commenced their submissions by stating that they instituted the Notice of Motion application dated 18th September, 2025. He cited the provisions of Order 1 Rule 8 of the Civil Procedure Rules which gives the right to a person to sue or defend on behalf of all in the same interest, Rule 12 was on the court's powers to give the order of suit it deems fit, Rule 13 centres around the authority of one to act on behalf of the other and lastly Rule 16 on leave to issue a 3rd Party notice to the government. Further, the Applicants relied on Order 8 which deals with amendments of pleadings.
9. The Learned Counsel for the Applicants made reference to the holding in the case of:- "Institute for Social Accountability & Another – Versus - Parliament of Kenya & 3 others [2014] eKLR", which while not brought under the Civil Procedure Rules but rather Constitutional Rules (although impute the same rules), the justices of the court in determining an amendment in constitutional violations and quoting Rule 18 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 stated that:-
- “the issue of amendment of pleadings is not novel and has been the subject of numerous court decisions, the denominator being that as a general principle, courts will normally allow amendment of pleadings at any stage of the proceedings if it can be done without occasioning injustice or prejudice to the other party and which prejudice can be compensated for by an award of costs. The justices further stated that, the object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of facts already pleaded or the relief or remedy already claimed but rather on the basis of the true state of the facts which the parties finally intend to rely on. ”
10. In reiterating the judges in the above case, the Applicants placed emphasis on "the power of amendment that makes the function of the court more effective in determining the substantive merits of the case rather than holding captive to form of the action or proceedings". Applicants thus submitted that no prejudice will be occasioned to Plaintiffs that cannot be remedied by costs.
11. Secondly, the Counsel asserted that the that the amendment aimed to determine rights and came to a just conclusion on this matter. In dealing with the issue of joinder of persons, the court was referred to the holding in the case of:- "Lucy Nungari Ngigi & 128 others – Versus - National Bank of Kenya Limited & another [2015] eKLR" quoting Order 7 Rule 9 of the Civil Procedure Rules stated that:- "joinder of parties (specifically of a large number of people being joined to the suit) stated that, in law, joinder should be permitted of all parties in whom any interest to relief in respect of or arising out of the same act or transaction or series of acts or transactions was alleged to exist, whether jointly, severally;



or in the alternative, where if such persons brought separate suits, any common question of law of fact would arise."

12. The Court while giving limitations as well concluded that the joinder of parties is permitted by law and it can be done at any stage of the proceedings especially where it is on the same suit property and common issues.
13. Thus, the Applicants reiterated the contents of their grounds as advanced in the Notice of Motion application dated 18th September 2024 and the Replying Affidavit dated even date as sworn by Hamisi Ali Gakurya and the attachments thereunder and submitted that the persons sought to be joined have interests in the suit property; as that is the place they know and have called home from time immemorial and indeed common issues would arise.
14. On the issues of the matter being part heard. The Learned Counsel, submitted that amendments could be done at any time of the proceedings as long as parties had not closed their cases. The Applicant averred that the Plaintiffs' assertions on the intent and purport of amendments as stated in Paragraphs 4 & 11 of their Replying Affidavit dated 12th November 2024 was misguided with no legal basis.
15. The Counsel for the Applicants urged the court to allow the notice of motion application dated 18th September 2024 with costs.

B. The Written Submissions by the Plaintiffs/Respondents

16. The Law firm of Messrs. Mungai Kamau & Co Advocates on behalf of the Plaintiffs/Respondents filed their written submissions. Mr. Mungai Kamau Advocate commenced stating that they opposing the application by the Applicant herein. He argued stated that the Application lacked merit since the Defendants/Applicants had failed to demonstrate by annexing material evidence that they were in actual and physical possession of the suit property. Further, he averred that the Court could not act on assumptions that the Defendants/Applicants have an interest in the property without sufficient evidence to confirm the same.
17. The Counsel submitted that a close scrutiny of the list of the persons who had authorized the 1st Defendant to sue on their behalf confirmed that not all person listed therein had appended their signatures and some of them had no identification numbers to confirm if they existed. That the list also confirmed that if at all they were genuine persons, they were inhabitants of "Block 14 residents" which was not the subject matter of this suit. Additionally, the Learned Counsel averred that there was no indication from the Area Chief or an official confirming that these people were living on the suit properties.
18. According to the Learned Counsel, the Applicants were busybodies who were abusing the Court process by joyriding on the Plaintiffs'/Respondents' suit. They were using the 1st Defendant/Applicant to try to acquire the suit property through Land Adverse Possession. That the application herein was intended to alter the material and change the cause of action of the entire suit thus prejudicing the Plaintiffs/Respondents who had already testified and closed their case.
19. It was submitted that the Plaintiffs/Respondents would suffer great prejudice by further prolonging the suit since they would be unable to utilise the suit property, if the application herein was allowed. This would be very prejudicial and would occasion great injustice to the Plaintiffs/Respondents since the Defendants/Applicants intend to cover the gaps in their earlier defence by amending their defence. The 4th Defendant/Applicant was disguising himself as the Applicant and he had failed to demonstrate there were genuine Applicants since none of them had signed the Supporting Affidavit. The purported



Letter of Authority could only be valid and take effect if the Applicants had been enjoined in the proceedings. Therefore, the Application had been made in bad faith and mala fide.

20. Lastly, the Learned Counsel stated that the proposed new parties would add no value to the suit and or Defendants since none of the prayers sought in the Counter - Claim had nothing to do with the proposed new Defendants i.e. the Land Registrar, Director of Land Administration and the National Land Commission. The Application was a delay tactic by the Applicant in concluding the matter. The Court record could confirm the parties participated in the pre-trial directions and confirmed they were ready for hearing. They, had occasioned numerous adjournments during the defence stage and the issue for amending the Defence and Counter - Claim had been raised as a last resort when the matter was marked as a last adjournment.
21. That the Plaintiffs'/Respondent's rights to a fair and expedited hearing would be violated and infringed if the application herein was allowed. To buttress on this point, the Learned Counsel made reference to the cases of:- "Joseph Ochieng & 2 others – Versus - First National Bank of Chicago, Civil Appeal No. 149 of 1991" and in the Court of Appeal in the case of "Rubina Ahmed & 3 Others – Versus - Guardian Bank Limited (Sued in its capacity as successor in the title to First National Finance Bank Ltd [2019] eKLR". That the Defendants/Applicants had failed to demonstrate what interest they had in the suit properties. They had failed to prove they are in the possession and the alleged Letter of Authority to the 1st Defendant was deficient in substance and could not be relied on by the Court and that the Application herein be dismissed with costs.

VI. Analysis and Determination

22. I have keenly considered all the issues as outlined from the application dated 18th September 2024 by the applicants herein, the pleadings filed by all parties herein, the elaborate written submissions, the myriad of authorities cited herein, the relevant provisions of *the Constitution* of Kenya 2010 and statutes.
23. In order to arrive at an informed, just fair and reasonable decision the Honorable Court has framed the following three (3) issues for its determination. These are: -
 - a. Whether the Notice of Motion application dated 18th September 2024 by the Applicants seeking to have parties joined in the suit has any merit.
 - b. Whether the parties herein are entitled to the reliefs sought
 - c. Who will bear the costs of the application?

ISSUE No. a). Whether the Notice of Motion application dated 18th September 2024 by the Applicants seeking to have parties joined in the suit has any merit.

24. Under this Sub – title, the Honourable Court will examine the substratum on granting leave for joinder of parties and the amendment of pleadings. The joinder of parties is governed by the provision Order 1 Rule 10 (2) of the Civil Procedure Rules, 2010 which provides as follows: -

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any 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 effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”



25. Further, under the provision of Order 1 Rule 3 of the Civil Procedure Rules, a person may be joined in a suit as a Defendant against whom any right to relief arising out of an act or transaction is alleged to exist. The said provision provides as follows:

“All persons may be joined as Defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”

26. The power of a court to order joinder is one based on its discretion which must however be exercised judiciously and in accordance with the parameters set out in Order 1 Rule 10(2) of the Civil Procedure Rules, 2010. The said position has been affirmed by the court in a plethora of cases and therefore the Honourable Court will not proceed to re – invent the wheel. One of such cases was of:- “Civicon Limited – Versus - Kivuwatt Limited and 2 Others [2015] eKLR” as follows:

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined...from the foregoing, it may be concluded that being a discretionary order, the court may allow the joinder of a party as a defendant in a suit based on the general principles set out in Order I rule 10 (2) bearing in mind the unique circumstances of each case with regard to the necessity of the party in the determination of the subject matter of the suit, any direct prejudice likely to be suffered by the party and the practicability of the execution of the order sought in the suit, in the event that the plaintiff should succeed. We may add that all that a party needs to do is to demonstrate sufficient interest in the suit; and the interest need not be the kind that must succeed at the end of the trial.”

27. This court in the case of:- “Joseph Njau Kingori – Versus - Robert Maina Chege & 3 Others [2002] eKLR” distilled the guiding principles in considering whether to allow joinder of an intending party as follows:“

- a. He must be a necessary party.
- b. He must be a proper party.
- c. In the case of the defendant there must be a relief flowing from that defendant to the plaintiff.
- d. The ultimate order or decree cannot be enforced without his presence in the matter.
- e. His presence is necessary to enable the Court effectively and completely adjudicate upon and settle all questions involved in the suit.”

28. In my understanding and from the provisions of law quoted above herein together with the myriad of case law, for a person to be joined in a suit, there ought to be some relief sought against them in respect to the matter. It is also for the court to be able to effectively adjudicate over the matter.

29. The real issue in dispute in the instant suit is ownership of the suit property plot number Kwale/Tiwi Beach Block/78 to 140. According to the Applicants agitating this application, The Land Registrar Kwale and the National Land Commission ought to be made parties in this suit in order for the court



to make a just determination of the suit. The applicants further seek that the other 242 Applicants as set out in the Amended Defence and Counter - Claim be made parties as they are currently in occupation of the suit parcel.

30. The Applicants state that despite being in occupation of the suit property, the land was transferred to the Plaintiffs/Respondents for a lease period of 99 years. The transfer is termed as illegal hence necessitating the presence of the intended Defendants who are state bodies responsible for the registration of titles and land adjudication and allocation.
31. In applying the above legal principles to the instant application, the Honorable Court is satisfied that there is wanton necessity to have these parties joined in the matter. Certainly, the court is convinced that the joinder of these parties will assist in effectually determining the matter and will further give a clear glimpse on the history on ownership of the suit property together with the legality in transfer of the title herein to the Plaintiffs. Indeed, there are several reliefs flowing from that Plaintiffs to the Applicants in the event that a case is made and the same will be achievable if these parties were joined.
32. The court is also keen on avoiding multiplicity of suits and to allow the Applicants Defence and Counter - Claim to be effective as per the issues raised. See the Ugandan case of “Departed Asians Property Custodian Board – Versus - Jaffer Brothers Limited [1999] 1 EA 55”.

ISSUE No. C.). Whether the parties are entitled to the reliefs sought

33. Under this sub – heading, the other pending issue is whether the Honourable Court should grant the leave for the amendment of the pleadings. The Defendants have sought to be granted leave to Amend the Defence and Counter - Claim and joint the Land Registrar, Kwale and the National Land Commission as Defendants together with 242 other applicants in this suit as set out in the amended defence and counterclaim annexed herein.
34. Legally speaking, the legal principles on amendment of pleadings are provided for under the provision of Order 8 Rules 1, 2 and 3 of the Civil Procedure Rules, 2010. Procedurally, before the close of pleadings, the leave of Court is not required as opposed to when there has been closure of pleadings. As expressly stated out under Order 2 Rule 13 of the Civil Procedure Rules, 2010, in the instant case the pleadings have already closed and therefore leave to amend the pleadings is required. The principles upon which a Court acts in an application to amend pleadings before/during trial are well settled and succinctly stated in several cases already developed by various Courts with the passage of time.
35. Being a pari material issue, it is pertinent that the Court reproduces the provision of Order 8 herein. Order 8 Rule 3 provides that:
Amendment of pleading with leave [Order 8, Rule 3.]
 - (1) Subject to Order 1, Rules 9 and 10, Order 24, Rules 3, 4, 5 and 6 and the 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) Where an application to the court for leave to make an amendment such as is mentioned in Sub Rule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such sub rule if it thinks just so to do.
 - (3) An amendment to correct the name of a party may be allowed under sub rule (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.

- (4) An amendment to alter the capacity in which a party sues (whether as Plaintiff or as Defendant by counterclaim) may be allowed under sub rule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued.
 - (5) An amendment may be allowed under sub rule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.
36. Amendment should not work injustice to the other side. But an injury that can be compensated by way of costs is not treated as an injustice. Further, the Honorable Court should aim to avoid multiplicity of proceedings and all amendments that should avoid such multiplicity should be allowed. The foregoing precedent confirms that the Honourable court has a wide and unfettered discretion to allow amendment of a claim provided that it is not after an inordinate delay or if it would occasion prejudice to the other side or if it introduces a new or inconsistent cause of action to the proceedings.
37. As stated, there have been a plethora of cases on the issue of amendments of pleadings. Hence, the Court should not be perceived to be re – inventing the wheel. These includes the case of “Eastern Bakery – Versus - Castelino (1958) E.A 461 (U) at Page 462 and Civil case No. 7 of 2017, St. Patrick’s Hills School Limited - Versus - Bank of Africa Kenya Limited” eKLR (2018) where courts held, “inter alia”:
- “It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearings should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice to be if the other side can be compensated by costs.....”
38. The same was later on buttressed by the case of: “Bramwell, LJ in “Tildesley – Versus - Harper” (1878), 10 Ch. D. at Page 296 stated as under:
- “My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide, or that, by his blunder he has done some injury to his opponent which could not be compensated by costs or otherwise...”
39. It is clear that from the above principles which I endeavor to import to this case that an amendment of pleadings in general should be allowed before the final Judgement is delivered. Pursuant to the above position, in application of the said legal principles to the instant case, this Court agrees with the Applicant while seeking the reliefs it has from the filed application to cause amendments to its already filed Defence and Counter - Claim based on the prevailing circumstances. Concurrently, the plea by the Applicant is supported by the fact that the power to amend pleadings is at the discretion of the Court. In that case the court must act judicially in the exercise of its discretion within the ambit of the Principles of natural justice. The Court has already decided and granted leave to join the Proposed 242 parties, the Land Registrar and the National Land Commission as Defendants in the suit hence an amendment of the pleadings is inevitably vital and of cardinal importance for the purposes of determining the real question in controversy between the parties.
40. Additionally, the case of “Molo and Another – Versus - Kenya Railways and Another (2002) 2 KLR 551 decided by Onyango Otieno J as he then was (now JA) on an application for amendment. The Learned Judge held “inter alia” that:-



- i. It is a well settled principle in law, that applications for amendments to pleadings before hearing are normally to be granted without much a do if they can be made without injustice to the opposing party.
 - ii. The reason why amendments to pleadings are generally granted without much fuss particularly before hearing is because such amendments help to have all matters between the parties availed to court, so that the court, may be in a better position to have an informed view of the entire case. That ensures justice.
 - iii. No time limit can be spelt out for an application for amendments as it is an application that can be made at any time even after these is heard but before Judgment.
41. Thus, this Honorable Court notes that the instant suit is still at its hearing stage hence the application was bona fide, timeously brought and meritorious as the amendment will not be introducing a new cause of action which is substantially different from the already existing one not offending Order 8 Rule 3 of the Civil Procedure Rules, 2010. Besides, in order to balance the scale of Justice as it were, the Court will allow the Plaintiff/Respondent corresponding leave and the opportunity to respond to the amendment if they so wished to do. Therefore, for these reasons, under this sub – heading the application for the Defendant/Applicant succeeds.

ISSUE No. d). Who will bear the cost of the application

42. It is now well established that the issue of Costs is at the discretion of the Court. Costs meant the award that is granted to a party at the conclusion of the legal action, and proceedings in any litigation. The Proviso of Section 27 (1) of the Civil Procedure Rules Cap. 21 Laws of Kenya holds that Costs follow the events. By the event, it means outcome or result of any legal action. In the case of “Hussein Muhumed Sirat – Versus - Attorney General & Another [2017] eKLR, the court stated that costs follow the event as a well-established legal principle, and the successful party is entitled to costs unless there are other exceptional circumstances.
43. In the present case, the Honourable Court elects to have the costs in the cause.

VII. Conclusion & disposition

44. Consequently, upon causing an indepth analysis to the framed issues herein, the Honourable Court based on the principles of preponderance of Probabilities and the balance of convenience proceeds to make the following orders:-
- a. That the Notice of Motion application dated 18th December, 2024 be and is hereby found to have merit and thus allowed.
 - b. That the Applicants hereinabove named be and are hereby granted leave to sue in the Counter - Claim on their own behalf and on behalf of all members living on the parcel of land reference no Kwale/Tiwi Beach Block/78 to 140 and all those members living on the said parcel be and are hereby joined as Applicants in this suit.
 - c. That the Defendants be and is hereby granted leave to Amend the Defence and Counter - Claim and joint The Land Registrar Kwale and the NATIONAL LAND COMMISSION as Defendants together with 242 other Applicants in this suit as set out in the Amended Defence and Counter - Claim annexed herein
 - d. That the Plaintiffs be and are hereby granted corresponding leave to amend the Plaint and issue fresh summons to enter appearance to the said Land Registrar Kwale, THE DIRECTOR



LAND ADMINISTRATION and THE NATIONAL LAND COMMISSION - within the next 21 days from this date hereof.

- e. That the above named parties at [b] be hereby granted 21 days leave to fully comply with the provisions of Orders 7 and 11 of the Civil procedure Rules, 2010.
- f. That for expediency sake, there be a mention on 22nd October, 2025 for purposes of conducting a Pre – Trial Conference pursuant to the provision of Order 11 of the Civil procedure Rules, 2010. Subsequently, there be a hearing date on 21st January, 2026.
- g. That costs of the application be in the cause.

IT IS ORDERED ACCORDINGLY.

RULING DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS, SIGNED AND DATED AT KWALE THIS.....11TH DAY OFJULY2025

.....

**HON. MR. JUSTICE L.L NAIKUNI,
ENVIRONMENT & LAND COURT AT KWALE.**

Ruling delivered in the presence of: -

- a. Mr. Daniel Disii, the Court Assistant.
- b. Mr. Mungai Kamau Advocate for the Plaintiff/Respondent.
- c. Mr. Olendi Advocate for the 1st Defendant/Applicant.
- d. No appearance for the 2nd, 3rd, 4th, 5th & 6th Defendants.

