



REPUBLIC OF KENYA



**KENYA LAW**  
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**Yabune v Munene & 2 others (Environment and Land Case  
170 of 2017) [2025] KEELC 6054 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6054 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE 170 OF 2017  
CK NZILI, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**GEOFFREY LUTILO YABUNE ..... PLAINTIFF**

**AND**

**ANTHONY MUNENE ..... 1<sup>ST</sup> DEFENDANT**

**THE LAND REGISTRAR, TRANS NZOIA ..... 2<sup>ND</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. What the court is asked to determine is whether or not the 1<sup>st</sup> defendant, as the applicant, is entitled to leave to amend the defence in terms of the draft amended defence and counterclaim, attached to the supporting affidavit sworn by Anthony Munene on 16/6/2025. The reasons are that the proposed amendments will bring out all the issues in this matter and settle the questions involving the parties.
2. The applicant deposes that certain developments have occurred during the pendency of this suit, including the issuance of a certificate of title to the plaintiff. The applicant deposes that he had instructed his previous lawyers on record to apply for the amendments in an abandoned application dated 24/7/2019, which has prejudiced him.
3. The applicant deposes that after the plaintiff, the respondent, was granted leave on 13/2/2018 to amend the plaint, his former advocates on record failed to file an amended defence and counterclaim, despite leave having been granted to do so, hence the application that was abandoned alluded to above. The applicant deposes that the application is made in good faith and that it is in the interest of justice to grant the orders sought.
4. The application is opposed through a replying affidavit of Geoffrey Lutilo Yabune, sworn on 14/7/2025, for being brought after inordinate delay and in bad faith. It is deposed that on 13/2/2018,



corresponding leave was granted to the applicant to amend the defence and file a counterclaim if need be, of which he failed to do, leading to an application dated 24/7/2019, which he also failed to prosecute.

5. The plaintiff/respondent deposes that the hearing of the matter commenced on 23/3/2023 and was cross-examined by the 1<sup>st</sup> defendant's/applicant's counsel on 5/10/2023, remaining with further cross-examination by counsel on record for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.
6. The plaintiff/respondent deposes that in all those occasions for hearing, the intention to seek leave to amend was not communicated; otherwise, this application is not only malicious but also a mischievous attempt to further delay the matter, which has been pending since 2017.
7. Further, the plaintiff/respondent deposes that he has been denied use and possession of the suit land by the 1<sup>st</sup> defendant/applicant, hence will continue to suffer substantial loss and damage if there is further delay of the matter, which unfortunately works out in favour of the 1<sup>st</sup> defendant, who continues to utilise his land.
8. The 1<sup>st</sup> defendant/applicant relies on written submissions dated 28/7/2025. It is submitted that Order 8 Rules 3 and 5 of the Civil Procedure Rules grant the court powers to allow for the amendment of pleadings, and in this case, the proposed amendments will bring out the real issues or questions in controversy. Reliance is placed on *Institute for Social Accountability & Another -vs- Parliament of Kenya & Others* [2014] eKLR.
9. The 1<sup>st</sup> defendant/applicant submits that there will be no prejudice or injustice occasioned to the plaintiff for the suit, by consent, is due to start de novo. Reliance is placed on *Kipkurgat Kibor Kibiego -vs- Nicholas Gichuru ELC* Case No. 333 of 2013 and in *Central Bank of (K) Ltd -vs- Trust Bank Ltd* [202] EA 365.
10. Similarly, the 1<sup>st</sup> defendant/applicant submits that the delay in applying is excusable; otherwise, his intention to do so is so clear in the court records only that his erstwhile lawyers let him down, and he should not suffer due to their mistake.
11. Amendment of pleadings is a discretionary power of the court. In *St. Patrick's Hill High School Ltd -vs- Bank of Africa Ltd* [2018] eKLR, the court said that the power of the court to allow for amendment is intended to determine the substantive merits of the case, it has to be sought timeously; it can be exercised at any stage of the proceedings; late is leave granted if made in good faith, provided costs can compensate the other side and that the party will not be allowed to reframe the case or his claims if it will deprive the other party a right to rely on an accrued defence such as on limitation of action.
12. The 1<sup>st</sup> defendant/applicant says that he has harboured the intention to amend for a long time and was only let down by his former lawyers on record. On the other hand, the plaintiff/respondent says that he will be gravely prejudiced and injustice will be visited upon him if the reliefs sought are not granted at this late stage.
13. In a rejoinder, the 1<sup>st</sup> defendant/applicant says that there is a consent to start the matter de novo, hence there will be no prejudice that will be occasioned in the circumstances.
14. The rule is that an amendment may be allowed, however late it is sought, if the other side will not be prejudiced. See *J.C. Patel -vs- D. Joshi* [1952] 19 EACA 12. As long as the court can compensate the opposite side, an amendment may be allowed. See *Ocean Foods Limited -vs- Osotspa Company Limited & 2 others* [2020] eKLR.



15. In *Easter Bakery -vs- Castellino* [1958] EA 462, the court held that amendments should freely be allowed, as long as an injustice or prejudice that cannot be compensated with costs does not exist. The plaintiff and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have not pleaded that the intended amendment will alter the cause of action to a different character, so much that it will prejudice them by depriving them of an accrued legal right or occasioning an injustice to them.
16. The proposed amendments are said to bring forward all issues and questions into controversy. Other than the delay, the plaintiff and the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have not denied that the proposed amendments are seeking to avoid a multiplicity of suits or are inconsistent with the cause of action before the court, as held in *Central Bank (K) Ltd -vs- Trust Bank Ltd* [202] 2 EA 365.
17. In the circumstances, I allow the application. The amended defence and counterclaim are to be filed and served within 7 days from the date hereof. Costs to the plaintiff.
18. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**In the presence of:**

Court Assistant - Dennis

Chilaka for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants present

Arunga for the plaintiff present

Koskei for the 1<sup>st</sup> defendant present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

