



**Naman v Muthuri & 2 others (Environment & Land Case  
003 of 2022) [2024] KEELC 1094 (KLR) (4 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1094 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT & LAND CASE 003 OF 2022  
PM NJOROGE, J  
MARCH 4, 2024**

**BETWEEN**

**JAPHET MUTHEE NAMAN ..... APPELLANT**

**AND**

**EVERLYN NGUTA NAITORE MUTHURI ..... 1<sup>ST</sup> DEFENDANT**

**DAVID MWITI MWARANIA ..... 2<sup>ND</sup> DEFENDANT**

**ISIOLO COUNTY GOVERNMENT ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This application is dated June 6, 2023 and seeks orders that;
  1. That the plaintiff be granted leave to amend his plaint as per the annexed draft amended plaint.
  2. That costs of the application be in the cause.
2. The application has the following grounds;
  1. That leave is imperative before the plaint can be amended as pleading are closed.
  2. That to fully adjudicate on all the issues in dispute, an amendment is necessary on the plaint.
  3. That the plaintiff desires to plead all issues for determination in the plaint to enable the court determined the whole dispute.
  4. That no prejudice shall be occasioned to any party if the plaintiff is allowed to amend his plaint.
3. The application is supported by the affidavit of Japhet Muthee Naman which takes the following format;



### **Supporting Affidavit**

1. That I am the Plaintiff herein and therefore competent to swear this affidavit.
2. That I commenced this claim vide a plaint dated 26th February, 2019.
3. That I wish to amend the said plaint to include several issues for determination and several facts that were omitted during the preparation of the initial plaint.
4. That I wish to amend the plaint as per the annexed amended plaint marked as JMNI.
5. That no prejudice will be occasioned by any party if the proposed amendments are allowed.
6. That the proposed amendments shall assist the court in making a full determination of the dispute before it.
7. That the contents of this Affidavit are true to the best of my knowledge, information and brief.

Dated At Meru This 6Th Day Of June, 2023

4. The application was canvassed by way of written submissions.
5. A conspectus of the plaintiffs' submissions, all the authorities having been taken into account, is by and large a regurgitation of the issues raised in the supporting grounds and in the supporting affidavit.
6. The 1<sup>st</sup> and 2<sup>nd</sup> defendants oppose the application on account of the fact that the plaintiff and other witnesses had already testified. It was their opinion that the purpose of the application was to patch up glaring loopholes which were brought out during Cross-Examination of the plaintiff. They opine that the application is incompetent or fatally defective, an abuse of the process of the court and a waste of the courts precious time.
7. The 3<sup>rd</sup> defendant opposes the application through grounds of opposition dated 15<sup>th</sup> June, 2023. The grounds of opposition take the following format;

#### **Grounds Of Opposition**

1. Pleadings have already been closed.
2. The amendment will prejudice the 3<sup>rd</sup> defendant since it's an effort to cover the loopholes discernible during the plaintiff's testimony.
3. The hearing of the suit is at an advanced stage.
4. Granting of amendment orders sought is tantamount to re-opening the entire hearing and starting afresh.
5. This suit has been pending since the year 2019 and the application is an effort to further procrastinate the same.

Reasons Whereof the 3<sup>rd</sup> defendant prays that the application be dismissed with costs.

8. I have carefully considered the submissions submitted by the parties to buttress their veritably incongruent assertions. I have also carefully considered the grounds of opposition proffered by the 3<sup>rd</sup> defendant. I have further taken into account all the authorities cited by the plaintiff and by the 1<sup>st</sup> and 2<sup>nd</sup> defendants.



9. I am of the view that the main purpose of this application is to patch u issues raised during the Cross-examination of the plaintiff. I am persuaded by the defendant’s assertion that this application, if allowed, will have the effect of inordinately procrastinating the hearing and determination of the main suit. Indeed paragraph (a) of the grounds supporting the application is unequivocal that the concerned pleadings are closed.

I opine that it will be a very unorthodox process of litigation which will allow amendment of plaints when hearing of the apposite suit is at its tail end. Obviously, change of advocate midstream cannot change the dynamics of the judicial process.

10. In the circumstances, this court issues the following orders;

- a. This application is hereby dismissed.
- b. Costs for this application shall follow the event and are awarded to the defendants.
- c. The suit will be further heard on 13/5/2024.

**DELIVERED IN OPEN COURT AT ISIOLO THIS 4<sup>TH</sup> DAY OF MARCH, 2024 IN THE PRESENCE OF:**

Court assistant: Balozi/Rahma

**HON. JUSTICE P.M NJOROGE  
JUDGE**

