



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wakaba & another v Munoru & another (Environmental and Land Originating  
Summons 48 of 2023) [2024] KEELC 13333 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13333 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 48 OF 2023**

**YM ANGIMA, J**

**NOVEMBER 7, 2024**

**BETWEEN**

**MARGARET WANGUI WAKABA ..... 1<sup>ST</sup> PLAINTIFF**

**NANCY WANGUI WAKABA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**ELIZABETH NDUITA MUNORU ..... 1<sup>ST</sup> DEFENDANT**

**HANNAH NYOKABI NGOYO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By a notice of motion dated 09.10.2024 expressed to be brought pursuant to Sections 1A, 1B, 3A & 100 of the *Civil Procedure Act* (Cap.21), Order 8 rule 3 and Order 51 rule 1 of the Civil Procedure Rules, 2010 the Plaintiffs sought leave of the court to amend their originating summons and an order for the draft amended originating summons annexed to the application to be deemed as duly filed.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the 1<sup>st</sup> Plaintiff, Margaret Wangui Wakaba, on 09.10.2024. The sole purpose of seeking the amendment was to indicate the representative capacity in which the Plaintiffs had filed suit and the representative capacity in which the Defendants had been sued. The Plaintiffs contended that they were the personal representatives of the estate of the late Wakaba Ileri whereas the Defendants were the legal representatives of the estate of the late Leah Wangui Ndinguri.
3. The Defendants filed grounds of opposition dated 22.1.2024 in opposition to the application on three grounds. First, that the Plaintiffs had no legal capacity to file the suit in their own capacities and to sue the Defendants in their personal capacities. Second, that the suit as filed was defective and beyond amendment. Third, that the Plaintiffs had failed to annex copies of the relevant death certificates and letters of administration.



4. When the application came up for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the Plaintiffs filed written submissions dated 09.10.2024 whereas the Defendants' submissions were dated 22.10.2024.
5. The court has considered the Plaintiffs' notice of motion dated 09.10.2024, the Defendants' grounds of opposition and the submissions on record. The principles to be considered in granting or declining an application for leave to amend a pleading were summarized in the case of Central Kenya Ltd -vs- Trust Bank Ltd & 5 Others [2000] eKLR as follows:

“...The overriding consideration in applications for such 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 party beyond monetary compensation in costs. The policy of the law is that amendments to pleadings are to be freely allowed unless by allowing them, the opposite side will be prejudiced or suffer injustice which cannot properly be compensated for in costs.”
6. The court is satisfied that the amendment sought by the Plaintiffs is well founded and that it is necessary for the just determination of the suit. The Defendants shall not suffer any injury or prejudice if the Plaintiffs were to specify the representative capacity in which they have been sued. They shall also not suffer any prejudice if the Plaintiffs were to expressly declare the representative capacity in which they have filed the originating summons. The question of whether or not the Plaintiffs have obtained the relevant death certificate or letters of administration is an evidentiary issue to be dealt with at the trial.
7. As a consequence, the court is satisfied that the Plaintiffs are entitled to leave to amend the originating summons but the Defendants shall also be granted corresponding leave to file a further or supplementary affidavit in answer to the amended originating summons. As a result, the court makes the following orders for disposal of the notice of motion dated 09.10.2024:
  - a. Leave be and is hereby granted to the Plaintiffs to file and serve an amended originating summons within 14 days from the date hereof.
  - b. The Defendants shall be at liberty to file and serve a further or supplementary affidavit within 14 days upon service of the amended originating summons.
  - c. Costs of the application shall be in the cause.
  - d. The matter is hereby stood over to 27.01.2025 for pretrial directions.

Orders accordingly.

**RULING DATED AND SIGNED AT NYANDARUA THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

**Y. M. ANGIMA**

**JUDGE**

In the presence of:

Serah Binah for the Plaintiffs

Mr. Mwariri for the Defendants

C/A - Carol

