



**Kawinzi v Kitana & 2 others (Environment & Land Case
E046 of 2023) [2025] KEELC 3958 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3958 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E046 OF 2023**

**AY KOROSS, J
MAY 20, 2025**

BETWEEN

JOHN NZAU KAWINZI PLAINTIFF

AND

MONICA NDUNGE KITANA 1ST DEFENDANT

LYDIA MUTHINI MULI 2ND DEFENDANT

CHARLES MUTUKU MAINGI 3RD DEFENDANT

RULING

1st defendant's case

1. This is a ruling in respect of a notice of motion dated 11/10/2024 filed by the 1st defendant, where she seeks the following orders from this court: -
 - a. That the honourable court be pleased to decline the amendments to the plaintiff's plaint as amended on 11/07/2024 and filed on 2/08/2024.
 - b. That in the alternative and without prejudice to prayer (a) herein above, the honourable court does strike out the amended plaint dated 11/07/2024 and filed on 2/08/2024.
 - c. That this honourable court does make such other order or alternative orders as it might deem fit.
 - d. That the costs of this motion be paid out to the 1st defendant.
2. The motion is premised on the grounds listed on the face thereof and counsel Mutua Makau's supporting affidavit sworn on 11/10/2024. The grounds in support of the motion are: a) the plaintiff instituted the instant suit by way of a plaint dated 29/09/2023, b) the 1st defendant filed its statement of defence and served the same on 31/05/2024, raising pertinent issues to the plaintiff's claim; and



3. C) the plaintiff, in response to the issues raised and, in an attempt to cure the defects of its pleadings, amended its pleadings by among others introducing a 2nd plaintiff d) the plaintiff's amendments were made without leave of the court as provided in law, f) the 1st defendant stands to suffer prejudice if the orders are not granted and lastly, g) it is in the interest of justice if the orders sought are granted.

Plaintiff's case

4. The motion is opposed vide replying affidavit sworn by the plaintiff on 12/02/2025. The plaintiff avers that: a) the suit was commenced by the plaintiff dated 29/09/2023 and filed on 19/10/2023, b) upon being served with the pleadings and its accompanying documents on 13/11/2023, the 1st defendant filed a statement of defence dated 5/02/2024 on 11/06/2024; and
5. C) in response, the plaintiff subsequently filed a reply to the statement of defence and defence to counterclaim dated 5/07/2024 on 26/07/2024, d) the plaintiff thereafter filed his amended pleadings on 2/08/2024 approximately 7 days after the filing of the reply to the 1st defendant's statement of defence and a defence to the counterclaim, f) the amendment was made in adherence to the provisions governing the closure of pleadings.
6. It is worth noting that the other parties did not participate in these proceedings.

Submissions

7. This court has considered the well-written submissions by the law firms of J.A. Makau & Co. Advocates and Prof. Musili Wambua & Co. Advocates, respectively, on record for the 1st defendant and plaintiff, and they are both dated 7/02/2025.

Issues for determination, Analysis and Determination

8. Having considered the motion, its grounds, affidavits, and rival submissions, the singular issue for determination is whether the motion is merited.
9. As rightfully submitted by both counsels, the legal framework for amendment of pleadings is adequately covered within the provisions of Order 8 of the Civil Procedure Rules (CPR).
10. This Order captures the 2 thronged amendment process. The first procedure, as envisaged in Order 8 Rule 1 (1) of the CPR, is that a party may, without the leave of the court, amend any of her pleadings once at any time before the pleadings are closed.
11. Once she has so amended and served them on the defendant as stated in Order 8 Rule 1 (2) of the CPR, a series of events are triggered, including allowing the defendant to file an amended defence.
12. In this process, if a party is aggrieved by the amendment, Order 8 Rule 2 (1) of the CPR permits her to within 14 days after the service of the amended pleading, apply to the court to disallow the amendment.
13. When considering such an application, the court's discretion is guided by, amongst others, the principles established in Order 8 Rule 2 (1) of the CPR, in the following manner: -

“When the court hearing an application under this rule is satisfied that if an application to make the amendment in question had been made under rule 3 at the date when the amendment was made under rule 1(1) leave to make the amendment or part of the amendment would have been refused, it shall order the amendment or that part of it to be struck out.”



14. The 2nd procedure occurs where pleadings have closed, and it envisages a situation where leave of the court has to be sought. This process is provided for in Order 8 Rule 3 of the CPR, and in this scenario, 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 her pleadings.
15. In the circumstances of this case, the parties have taken a contrarian position, with the plaintiff insisting it was the 1st procedure that applied to him when he filed his amended plaint on 2/08/2024, as pleadings had not closed, while the 1st defendant insists it is the latter procedure that applied as pleadings had closed.
16. Accordingly, the question that suffices is when do pleadings close? The answer to this lies in Order 2, Rule 13 of the CPR, which provides: -

“The pleadings in a suit shall be closed fourteen days after service of the reply or defence to counterclaim, or, if neither is served, fourteen days after service of the defence, notwithstanding that any order or request for particulars has been made but not complied with.”
17. This court has gone through the record, and it emerges that the reply to defence and defence to counterclaim was filed on 2/8/2024 and not 26/07/2024 as alluded to by the plaintiff.
18. As has been demonstrated, the 1st defendant served his defence and counterclaim on 31/05/2025, which was filed and served out of time. The reply to the defence and the defence to counterclaim also suffered a similar fate as they were filed out of time. In this court’s humble view, these delays are technical infractions that are curable by Article 159 (2) (b) of *the Constitution* and will consider them as properly on record.
19. Unfortunately, in this case, where the amended plaint and a reply to defence and defence to counterclaim were all filed on 2/08/2024, the 1st defendant did not inform this court as to when these documents were served upon him.
20. Having failed to demonstrate to this court when this set of documents was served upon it after the closure of pleadings, this court is inclined to find the motion is not merited and also finds the amended plaint is properly on record.
21. Ultimately and for the reasons stated above, the Motion dated November 10, 2024 is hereby dismissed with costs being in the cause. Parties are hereby directed to fully comply with Order 11 of the CPR and exchange indexed and paginated trial bundles.

It is so ordered.

DELIVERED AND DATED AT MACHAKOS THIS 20TH DAY OF MAY, 2025.

HON. A. Y. KOROSS

JUDGE

05.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

M/s Mutata for respondent

Mr. Nzioka for 2nd and 3rd defendant



Mr. Odongo holding brief for Mr. Makau for 1st defendant

Ms Kanja- Court Assistant

