



**Good News Church of Africa v Board of Management Eldoret Secondary School
(Environment & Land Case 18 of 2019) [2025] KEELC 3956 (KLR) (19 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3956 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 18 OF 2019**

CK YANO, J

MAY 19, 2025

BETWEEN

GOOD NEWS CHURCH OF AFRICA PLAINTIFF

AND

BOARD OF MANAGEMENT ELDORET SECONDARY SCHOOL DEFENDANT

RULING

1. Vide a Notice of Motion application dated 16th October, 2024, the Plaintiff/Applicant seeks the following orders: -
 - a. Leave be and is hereby granted to the Plaintiff/Applicant to further amend its plaint in terms of the draft of the further amended plaint attached.
 - b. The draft of the further amended plaint annexed hereto be deemed to be properly filed and served subject to the payment of the requisite court fees.
 - c. The plaintiff also be granted leave to amend his statement and file a supplementary list of documents.
 - d. Costs of this application be provided for.
2. The application is brought under Order 8 Rules 3 and 5, Order 51 of the Civil Procedure Rules and Section 3A and 100 of the *Civil Procedure Act* and is premised on the 7 grounds on the face of the motion and supported by the affidavit sworn by Rev. Isaac Bett, the chairman of the Plaintiff/Applicant
3. The Applicant contends that in the amended plaint dated 28th March, 2019, they sought for a declaration that the plaintiff is the sole registered owner of all that parcel of land measuring approximately 2.428 Hectares known as Eldoret Municipality Block 11/20; an order for eviction against the Defendant to vacate the said land; an order of permanent injunction; mesne profits and



- costs. It is the Applicant's claim that it is necessary to further amend the plaint to include the Board of Management, Brick House High School as the 2nd Defendant in the suit as they are laying a claim over the suit parcel of land and have unlawfully encroached and constructed on the same.
4. It is averred that vide a letter dated 20th December, 2023, forwarded to the Applicant's Advocates on record, the Advocate for the Defendant, M/s Nyairo & Company Advocates, averred that it was not the Defendant who was carrying out construction activities on the suit land, but a third party who had encroached thereon. A copy of the said letter has been annexed and marked "1B -1".
 5. It is the Applicants contention that for the purpose of determining the question in controversy regarding the lawful proprietor and owner of the suit parcel of land as between the parties, this application is necessary. That no prejudice will be occasioned to the Defendant as the plaintiff's case is yet to be heard and concluded. The Applicant further contended that the further amendments sought do not bring in new facts for determination. A copy of the Draft Amended plaint marked 1B -2" has been annexed.
 6. The application was opposed. The Defendant/Respondent filed a Replying Affidavit sworn by Anne Halwenge Odwa, an Advocate of the High Court of Kenya having conduct of the matter on behalf of the Respondent on 22nd November, 2024. The Respondent alleged that the application was an afterthought and had been filed late in the day after pleadings closed. The Respondent also alleged that the application is mischievous as it will overhaul the entire case and change the character of the suit, bringing confusion to the facts and complicate the determination of the matter. The Respondent alleged that the Applicant is guilty of laches and seeks to litigate in peacemeal in order to defeat the cause of justice, hence urged the court to disallow the application and dismiss it.
 7. The application was canvassed by way of written submissions. The Applicant filed their submissions dated 14th March, 2025 while the Respondent filed their submissions dated 24th March, 2025. I have read and taken into account in arriving at my decision the rival submission together with the authorities relied on by the parties and I need not reproduce the same in this ruling.

Analysis and Determination;

8. The court has considered the application, the response filed, the written submissions and authorities cited. The only issues arising for determination are whether the Applicant is deserving of the orders sought and costs.
9. This is an application for further amendment of the plaint herein to bring in a 2nd Defendant in the suit and for the applicant to be granted leave to amend its statement and file a supplementary list of documents. The courts will normally allow amendments of pleadings at any stage of the proceedings if it can be done without occasioning injustice or prejudice to the other party/parties and on such terms as to costs or otherwise as may be just.
10. Amendment of pleadings is provided for under Order 8 of the *Civil Procedure Rules* Rule 3 (1), (2), 3 and (5) provides as follows:-
 1. Subject to 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 the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such sub-rule if it thinks it is 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 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 other person intending to sue or intended to be sued.
 4.
 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.
11. The general power to amend is provided for under Order 8 Rule 5 of the [Civil Procedure Rules](#) which provides that: -
1. For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.
 2. This rule shall not have effect in relation to a judgement or order.
12. In addition, Order 1 Rule 10 sub-rules (2) and (4) provides as follows: -
- (2) 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.
 - (3)
 - (4) Where a Defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new Defendant and, if the court thinks fit, on the original defendants.
13. It is clear from the above provisions of the law that the court has discretionary power to allow amendment of pleadings at any stage before judgement for purposes of determining the real question or issue between the parties. That discretionary power must however be exercised judiciously and not whimsically. It is also clear that the court may, in its discretion, allow the amendment to correct the name of a party notwithstanding that the effect of such an amendment will be to substitute or add a new party.
14. In this case, the plaintiff seeks to amend the plaint and add Board of Management Brick House High School as the 2nd Defendant. It is the Plaintiff's contention that the proposed Defendant is laying a claim over the suit property and have constructed on the suit parcel of land. In my humble view, the Respondent herein has not demonstrated what prejudice, if any, they will suffer if the application for amendment is allowed. On the contrary, if such leave to amend is granted, it would allow the 2nd Defendant to be added as an additional Defendant to the suit and a multiplicity of legal proceedings avoided. I fail to see any injustice that could result to the Respondent by allowing the amendment since



the trial has not started. The Respondent can adequately be compensated by costs. See *Eastern Bakery and Castlino* (11958) EA 461 at page 462 letter C.

15. Accordingly, and for the foregoing reasons, I allow the Notice of motion dated 16th October, 2024 in terms of prayers (a), (b) and (c) thereof. Costs of the application shall be in the cause. I also give the Defendant herein 14 days from the date of service of the further amended plaint to file amended defence and supplementary list of documents if any.
16. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 19TH DAY OF MAY, 2025.

HON. C. K. YANO

JUDGE, ELC

Ruling delivered virtually in the presence of: -

Ms. Odwa for Defendant.

No appearance for Z. K. Yego for Plaintiff.

Court Assistant – Laban

