



**Mang'are & 5 others v Independent Electoral & Boundaries Commission & 44 others;  
Seventh Day Adventist Church, East Kenya Union Conference, Nyamira Conference  
(Interested Party) (Petition E005 of 2024) [2025] KEHC 10283 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10283 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
PETITION E005 OF 2024  
WA OKWANY, J  
JULY 10, 2025**

**BETWEEN**

**MOFFAT TEYA MACHOGU MANG'ARE ..... 1<sup>ST</sup> PETITIONER  
EVANS MAOGA KIRIAMA ..... 2<sup>ND</sup> PETITIONER  
ELIJAH NYABUTI MAMBOLEO ..... 3<sup>RD</sup> PETITIONER  
JOSHUA NYAMBACHA ..... 4<sup>TH</sup> PETITIONER  
JOSEPH NYAMWARO MOMANYI ..... 5<sup>TH</sup> PETITIONER  
SAMSON KIBEGWA NYAOSI ..... 6<sup>TH</sup> PETITIONER**

**AND**

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION .... 1<sup>ST</sup>  
RESPONDENT  
TEA BOARD OF KENYA ..... 2<sup>ND</sup> RESPONDENT  
KENYA TEA DEVELOPMENT (MS) AGENCY LIMITED ..... 3<sup>RD</sup> RESPONDENT  
GIANCHORE TEA FACTORY COMPANY LIMITED ..... 4<sup>TH</sup> RESPONDENT  
NYANKOBA TEA FACTORY COMPANY LIMITED ..... 5<sup>TH</sup> RESPONDENT  
KEBIRIGO TEA FACTORY COMPANY LIMITED ..... 6<sup>TH</sup> RESPONDENT  
NYANSIONGO TEA FACTORY COMPANY LIMITED ..... 7<sup>TH</sup> RESPONDENT  
TOMBE TEA FACTORY COMPANY LIMITED ..... 8<sup>TH</sup> RESPONDENT  
SANGANYI TEA FACTORY COMPANY LIMITED ..... 9<sup>TH</sup> RESPONDENT  
OTUTO DANIEL MAKORI ..... 10<sup>TH</sup> RESPONDENT**



MONICA MORAA .....	11 <sup>TH</sup> RESPONDENT
MOMANYI DANIEL RASUGU .....	12 <sup>TH</sup> RESPONDENT
OMWENGA NICHOLAS .....	13 <sup>TH</sup> RESPONDENT
KERINA RICHARD NYAKUNDI .....	14 <sup>TH</sup> RESPONDENT
OGATA ELIJAH ONSONGO .....	15 <sup>TH</sup> RESPONDENT
NYAMONGO JOSEPH ACHOKI .....	16 <sup>TH</sup> RESPONDENT
NYANDIEKA THOMA ONCHABA .....	17 <sup>TH</sup> RESPONDENT
MAKORI YUVINALIS MATUNDA .....	18 <sup>TH</sup> RESPONDENT
DICKSON RANGI DEMO .....	19 <sup>TH</sup> RESPONDENT
NYAKUNDI DANCAN NYANGAU .....	20 <sup>TH</sup> RESPONDENT
NYAKUNDI DAVID OMBAGI .....	21 <sup>ST</sup> RESPONDENT
MANGENYA THADDEW MOSE .....	22 <sup>ND</sup> RESPONDENT
OBARE NELSON MOKAYA .....	23 <sup>RD</sup> RESPONDENT
ABUGA JACOB ORORI .....	24 <sup>TH</sup> RESPONDENT
NYAKUNDI SIMON NYANGAU .....	25 <sup>TH</sup> RESPONDENT
MOSIGISI TABELUS JOEL .....	26 <sup>TH</sup> RESPONDENT
GESORA RICHARD MONGARE .....	27 <sup>TH</sup> RESPONDENT
ONYANCHA NELSON ONDUKO .....	28 <sup>TH</sup> RESPONDENT
BURU PETER OKONGO .....	29 <sup>TH</sup> RESPONDENT
OMAYO DAVID .....	30 <sup>TH</sup> RESPONDENT
NYAMBATI CHARLES ONYAMBU .....	31 <sup>ST</sup> RESPONDENT
MOSIGISI ZEBEDEE BUNDI .....	32 <sup>ND</sup> RESPONDENT
JAMES M AKUMA .....	33 <sup>RD</sup> RESPONDENT
TOM MBOGA .....	34 <sup>TH</sup> RESPONDENT
ROBERT NYANYUKI .....	35 <sup>TH</sup> RESPONDENT
OGATO T MOMANYI .....	36 <sup>TH</sup> RESPONDENT
NAHASHON M OOGA .....	37 <sup>TH</sup> RESPONDENT
JAMES K NYAGISERE .....	38 <sup>TH</sup> RESPONDENT
DAVID R NYAMONGO .....	39 <sup>TH</sup> RESPONDENT
ONDIEKI EVANS ONGAGA .....	40 <sup>TH</sup> RESPONDENT
ARANI ANDREW ONTERI .....	41 <sup>ST</sup> RESPONDENT
OCHARO NYANCHAMA EVANS .....	42 <sup>ND</sup> RESPONDENT



ARISI VINCENT ATEI ..... 43<sup>RD</sup> RESPONDENT  
NYATIGO CHRISTOPHER NYABWARI ..... 44<sup>TH</sup> RESPONDENT  
NYAMOKO DANIEL ONDIEKI ..... 45<sup>TH</sup> RESPONDENT

AND

SEVENTH DAY ADVENTIST CHURCH, EAST KENYA UNION  
CONFERENCE, NYAMIRA CONFERENCE ..... INTERESTED PARTY

### RULING

1. The Petitioners filed the application dated 2<sup>nd</sup> December 2024 seeking leave to amend their current petition in accordance with the attached draft amended petition. The Applicants also pray that the amended petition be deemed as duly filed upon payment of the required court fees.
2. The application is supported by the affidavit of the 1<sup>st</sup> Petitioner, Moffat Teya Machogu Mangare, and is based on several grounds including the claim that the petition raises significant constitutional and legal issues of public interest, and that certain legal matters were inadvertently omitted during the drafting of the original petition. The Applicants argue that; the amendments are necessary for proper resolution of the issues; will not introduce new facts but instead clarify the existing ones and will not prejudice the Respondents. They also assert that the application is made in good faith and in line with principles of natural justice.
3. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents opposed the Application through the replying affidavit of the 4<sup>th</sup> Respondent's Chairman and the 17<sup>th</sup> Respondent, Mr. Thomas Nyandieka Onchaba, who avers that the application is brought too late in the day and after the Respondents had incurred a lot of costs and time in responding to the initial Petition. He further states that the proposed amendments have the effect of veering off the initial Petition and is akin to filing a completely new Petition as it introduces new facts and prayers that were not contained in the original Petition. It is the Respondents' assertion that the Petitioners merely seek to cure the gaps in their earlier Petition through the proposed amendments.
4. The Application was canvassed by way of written submissions as follows: -

#### **The Petitioners Submissions**

5. The Petitioners/Applicants argued that the amendments sought are necessary to to address various legal issues inadvertently left out during the initial drafting. They contend that the proposed changes aim to reflect, capture, and incorporate violations of constitutional provisions and the particulars of such violations. The Petitioners emphasized that the amendments do not introduce new facts or issues but instead seek to refine existing uncontested facts to better uphold the right to a fair trial. The Petitioners maintain that the issues raised are critical for proper determination and request that the Court allow the amendment in the interest of justice.
6. The Petitioners/Applicants argued that the amendment of pleadings is a well-established practice in the legal system that has been subject to rigorous judicial scrutiny, with courts generally favoring such amendments provided they do not cause prejudice to the respondents. They cited Rule 18 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, which allows a party to amend its pleadings at any stage of proceedings with the court's leave. The Petitioners maintained that, in the current circumstances, the court should exercise its discretion



in their favor. They relied on the decision in the case of Boniface Lum Amunga Biko vs. Director of Public Prosecutions & 3 others [2019] KEHC 11497 (KLR), which cited Ann Muthoni Karanu vs. La Nyavu Gardens Limited [2015] eKLR where the courts emphasized that amendments should be allowed to ensure that real disputes are resolved fairly and efficiently, aligning with the overarching objective of the Civil Procedure Rules to promote just and expeditious handling of cases.

### **The Interested Party's Submissions**

7. The Interested Party filed submissions dated 14th March 2025 wherein they support the Petitioners' application to amend their petition. They cited Order 8 Rule 1 and Order 8 Rule 3(1) of the Civil Procedure Rules 2010, which allow parties to amend their pleadings at any stage of proceedings before they are closed provided there is no prejudice to the opposing side. They cited the case of Erick Kennedy Okumu Ogola vs. Nation Media Group & another [2021] eKLR where the court emphasized that amendments should be freely allowed if they do not prejudice the opposing party or if any resulting inconvenience can be compensated with costs.
8. According to the Interested Party, the respondents will not suffer any undue prejudice, as they will also have the opportunity to amend their responses accordingly. The Interested Party concluded that the application is made in good faith, is timely, and aligns with the principles of natural justice. The Interested Party urged the court to allow the application.

### **The Respondents' Submissions**

9. The Respondents reiterated the contents of their Replying affidavit and added that while they acknowledge that it is within the Petitioners' rights to amend their petition, they urged the Court to consider the unreasonable delay and the resulting prejudice and costs that they had so far incurred.
10. They referred to the principles governing the amendment of pleadings as stated under section 100 of the *Civil Procedure Act* and Order VIA rule 3 of the repealed Civil Procedure Rules. They also referred to Bullen and Leake & Jacob's Precedents of Pleading and the case of Joseph Ochieng & 2 others *vs. First National Bank of Chicago Civil Appeal No. 149 of 1991* where the court held that amendments should be allowed in order to determine the true merits of a case, provided they are made in good faith, do not cause undue prejudice to the other party, and do not introduce entirely new claims or substantially different issues. The Court went on to state that amendments must not be immaterial or technical and should not deprive the defendant of their legal defenses, such as reliance on limitation statutes.

### **Analysis and Determination**

11. I have carefully considered the pleadings filed herein, the instant application and the submissions by the parties. A perusal of the record reveals that on 19<sup>th</sup> July 2024, this court allowed the parties to file and exchange pleadings before the next mention date which timelines the Petitioners did not comply with thereby resulting in the striking out of their intended amended Petition. The Petitioners thereafter filed the instant application to pursue the intended amendments.
12. From the foregoing submissions and legal authorities cited, it is evident that the Petitioners/Applicants have demonstrated sufficient cause to warrant the amendment of their petition. I note that the proposed amendments are neither frivolous nor intended to prejudice the Respondents, but rather serve to clarify and advance the real issues in controversy thereby ensuring a fair and just determination of the matter. The law, as consistently interpreted by both local and foreign courts, favours a liberal approach to amendments, provided that any inconvenience to the other party can be remedied by an award of costs and that the public interest in the efficient administration of justice is not compromised.



13. Accordingly, I find merit in the application dated 2<sup>nd</sup> December 2024. Leave is hereby granted to the Petitioners/Applicants to amend their petition as prayed. The amended petition shall be filed and served within seven (7) days from the date of this ruling. The Respondents shall have corresponding leave to file and serve amended responses, if any, within fourteen (14) days thereafter.
14. I award the Respondents thrown away costs of Kshs. 50,000 considering the inconvenience that the Petitioners have occasioned to them by the delay in filing the amended Petition.
15. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 10<sup>TH</sup> DAY OF JULY 2025.**

**W. A. OKWANY**

**JUDGE**

