



REPUBLIC OF KENYA



**Njuguna v Gikonyo t/a Garam Investments Auctioneers & another (Civil Suit
15 of 2014) [2025] KEHC 9539 (KLR) (Family) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9539 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL SUIT 15 OF 2014
HK CHEMITEI, J
JULY 3, 2025**

BETWEEN

LUCY WANGUI NJUGUNA PLAINTIFF

AND

**JOSEPH MUNGAI GIKONYO T/A GARAM INVESTMENTS
AUCTIONEERS 1ST DEFENDANT**

GOKHLE INVESTMENTS 2ND DEFENDANT

JUDGMENT

1. This ruling relates to the application dated 5th October, 2024 filed by the Applicant, Lucy Wangui Njuguna seeking for orders that:
 1. This honourable court be pleased to order that Messrs. Kinyua Koech Ltd, the Plaintiff's valuers, be given access to the suit property LR No. Kiambaa/Ruaka/934, for the purposes of undertaking a valuation of the property and presenting their valuation at the trial of this suit.
 2. The plaintiff do have leave to amend her plaint.
 3. If prayer No. 2 is granted, the intended amended plaint annexed to the supporting affidavit be deemed to have been filed and served on the Defendants.
 4. The costs of this application be in the cause.
2. The application is based on the grounds on its face thereof and supported by affidavit and further affidavit sworn by Lucy Wangui Njuguna on 5th October, 2024 and 20th February, 2025.
3. She avers inter alia that she seeks the court's permission to rely on the contents of the motion, the proposed amended plaint, the verifying affidavit and her witness statement. In preparing this case, her



advocates examined property law as it applies to both married and cohabiting women, both locally and internationally, and concluded that allowing the proposed amendment would serve the interests of justice.

4. She deponed that Article 45 of *the Constitution*, which guarantees protection of the family, applies equally to families formed through cohabitation between a man and a woman. Furthermore, the property rights traditionally granted to wives during marriage should equally apply to women in cohabiting relationships.
5. She further deponed that she elaborated in her witness statement, between 2009 and 2012, while she was consulting for the 1st Petitioner's business, they constructed 36 apartments on the suit property - registered in the name of the 2nd Defendant - using both her consultancy income and his earnings. The 1st Respondent has misrepresented the nature of her claim by framing it solely as a spousal interest, when in fact her case is founded on significant direct and indirect contributions toward acquiring and developing one of the contested properties, specifically L.R. No. Kiambaa/Ruaka/934. This property includes two apartment blocks that were built between 2007 and 2013, during the period she cohabited with the 1st Respondent as husband and wife, under the circumstances detailed in her plaint and witness statement.
6. That between 2009 and 2013, she worked as a business consultant at Garam Auctioneers, where she played a key role in expanding its operations. The income generated from this business was used to fund the construction of the apartments on the said land. As outlined in her Notice of Motion dated 10th October, 2025 and the accompanying affidavit sworn on the same day, she now seeks to amend her plaint to incorporate evidence of her contributions to the property's acquisition and development.
7. Additionally, Article 50 of *the Constitution* guarantees her the right to a fair trial, which includes, as affirmed in Supreme Court Petition No. 36 of 2018: Christopher Odhiambo Karan vs David Ouma Ochieng (2018) eKLR, the opportunity to present evidence supporting her claim during trial. Although the suit property is registered in the name of the 2nd Respondent - a private company - this should not prevent the court from lifting the corporate veil to determine whether the company is merely a shell used by the 1st Respondent to conceal matrimonial assets and evade her rightful claim.
8. That the 2nd Respondent, in this context, is not acting as an independent entity but was simply a vehicle used by the 1st Respondent to shield the property. A valuation of the property is essential for a fair resolution of the dispute, as it will help the court determine the precise value of her share.
9. The application is opposed vide replying affidavit sworn by Joseph Mungai Gikonyo on 5th February, 2025.

He avers inter alia that

He serves as the director of the 2nd Defendant/Respondent. The main issue in the current application is that the Applicant claims to have been his spouse and, on that basis, asserts a right to some of the assets acquired by the 1st Defendant during their relationship, even though these assets are registered in the 1st Defendant/Respondent's name.

10. In her motion, the applicant requests that the property known as L.R. No. Kiambaa/Ruaka/934 ("the property") be valued for presentation at trial. However, this request cannot be granted because the property is registered in the name of the 2nd Defendant/Respondent, which is a private limited company. As such, the company is a separate legal entity from its directors and shareholders.



11. The Applicant is neither a director nor a shareholder in the said company and has failed to demonstrate any legal or factual connection to it. Therefore, her claim to the property must be grounded in a legitimate, demonstrable interest, which is lacking in this case.

Moreover, the valuation of the property is not necessary for the resolution of the dispute. The Plaintiff's proposed amendments to the plaint are so extensive that they would fundamentally alter the nature of the original suit, effectively amounting to a complete rewrite and an attempt to strengthen her case while the matter is already part-heard.

12. In conclusion, the proposed amendments are unfounded, lacking in evidence and appear to be made in bad faith, with the intention of unfairly disadvantaging the Defendants. Therefore, it is in the interest of justice that the Plaintiff's application dated 5th October, 2024, be dismissed with costs.

13. The Applicant has filed written submissions dated 22nd February, 2025 placing reliance among others on the following:-

- a. Application No. 3 of 2016: Johnson Akol Omunyokol versus the Attorney General of the Republic of Uganda where the court cited, with approval, the case of Eastern bakery v Castelino [1958] EA 461 where the court held as follows: "13. The amendment of pleadings with leave of court is governed by Rules 48 (c) and 50 of the Rules. We reproduce the said Rules for ease of reference. Rule 48: "For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any pleadings, a party may amend its pleadings... (c) with leave of court. (1) The court may, at any stage of the proceedings, allow any party to amend its pleadings in such a manner as it may direct and, on such terms, as to costs or otherwise as may be just. 14. The above provisions expressly provide that this court has discretionary power to allow amendment of pleadings at any stage of the proceedings for purposes of determining the real question or issue on controversy between the parties. That discretionary power is exercised so as to do justice to the case and must be exercised judiciously with due consideration of all the facts and circumstances before the court. 15. The principles that guide the exercise of this discretion were discussed in Eastern Bakery v. Castelino (1958) E. A. 461. In that case, it was held that as a rule, amendments to pleadings should be freely allowed if they can be made without injustice to the other side."
- b. Jahangir Alaudin Chanandin vs Anju Chanandin & 5 Others [2020] eKLR where the court stated as follows: "I can see no prejudice that would be occasioned to the Respondents if this is done and, in the premises, I allow the prayer to amend the memorandum of appeal to include the proposed grounds of appeal."

14. The Respondent has filed written submissions dated 13th May, 2025 placing reliance among others on the following:

- a. Oyolla v Awange & 2 others (Environment and Land Miscellaneous Application E035 of 2022) [2024] KEELC 1708 (KLR) where the court reiterated that: "... powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for;... that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; ... that the Plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the Defendant would be deprived of his right to rely on Limitations Acts."
- b. Salomon v Salomon & Co. Ltd [1897] AC 22 where it was held as follows: "A company is at law a different person altogether from the subscribers to the memorandum; and though it may



be that after incorporation the business is precisely the same as it was before... the company is not in law the agent of the subscribers or trustee for them.”

- c. *Rattiram v State of M. P.* where it was observed as follows: “A fair trial is required to be concluded in such a manner which would totally ostracize injustice, prejudice, dishonesty and favoritism... There has to be a fair trial and no miscarriage of justice, and under no circumstances, prejudice should be caused to the accused.”

Analysis And Determination

15. I have carefully considered the application, the responses thereto and the rival submissions filed by the parties.
16. The issues of determination, as crafted by the Defendants/ Respondents, are as follows:-
 - a. Whether the Applicant should be granted leave to amend their plaint dated 23rd September, 2014?
 - b. Whether the Applicant should be granted orders to enter and evaluate the parcel of land known as L.R. No. Kiambaa/Ruaka/ 934?
17. I have extensively perused the application herein and in my view and as correctly put by the Respondents I think the application has been made after a long period of time, namely close to 11 years after filing. There is no reason why the same has been delayed yet the facts which are in issue have been within the knowledge of the applicant.
18. The property Kiambaa/Ruaka/924 was known to her all the while and she cannot, respectfully, claim that she needs to amend her pleadings.
19. In *Kassam v Bank of Baroda* [2002] eKLR the court held that:- “A late amendment may be done, but the appellant must show why the application is made late and must satisfy the court that the delay is not deliberate. Late applications for amendments are liable to be rejected if there has been unexplained delay in making the application. Any delay is a material factor to be considered by the court before exercise of its discretion.”
20. More significantly is the fact that the suit property is registered in the name of the 2nd Defendant which is a limited liability company. The applicant from her pleadings is neither a director nor a shareholder in the said company. If at all she intends to stake a claim in the company then she ought to bring herself under the purview of the commercial division of this court where she may argue on the issue of corporate veils among other issues.
21. As it is I doubt whether this court as constituted can litigate over the 2nd Defendant in the manner and style she suggests.
22. At the same time and even for argument’s sake, I do not think valuing the property at the moment will aid the Applicant. The court does not need any valuation to determine the rights of the Applicant in the impugned property. Ordinarily a valuation would suffice in the event of an order for divisions of the property.
23. At the moment no judgement or a ruling of this court has been made to indicate her entitlement. In so many words nothing is lost for her if the suit proceeds to its logical conclusion and thereafter if need be the court will order such valuation.
24. In the premises I do not find merit in the application and dismiss it with no order as to costs.



DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 3RD DAY OF JULY 2025.

H K CHEMITEI

JUDGE

