



Republic v Minister for Lands & 4 others; Ndolo (Exparte); Ndolo (Interested Party) (Environment and Land Judicial Review Case 2 of 2023) [2025] KEELC 3841 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3841 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 2 OF 2023**

**EO OBAGA, J
MAY 15, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

THE MINISTER FOR LANDS 1ST RESPONDENT

DEPUTY COUNTY COMMISSIONER KILUNGU 2ND RESPONDENT

**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 3RD
RESPONDENT**

SUB-COUNTY SURVEYOR (KILUNGU-MAKUENI 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

AND

KINAMA ILUTA NDOLO EXPARTE

AND

MWANGANGI ILUTA NDOLO INTERESTED PARTY

RULING

1. Two applications are before this court for determination. The first one is the Notice of Motion dated 20th December, 2023 where the following orders were sought by the Interested Party/Applicant: -
 1. Spent
 2. That the application for leave granted on 4th October, 2023 be declared to have abated.



3. That the document indicated as the Notice of Motion dated 11th October, 2023 be expunged from the record.
4. That the costs of this application be provided for by the Ex-parte Applicant.
5. That such other orders as may appear to the court to be just and convenient.
2. The application is premised on the grounds appearing on the face thereof in addition to the supporting affidavit of the Interested Party sworn on even date. He averred that the Ex-parte Applicant filed an application for leave institute judicial review proceedings on 3rd October, 2023. That directions were issued on 4th October, 2023 for the Ex-parte Applicant to file the substantive Notice of Motion within twenty-one days.
3. The Interested Party averred that the Ex-parte Applicant filed a document known as Notice of Motion without accompanying documents seeking leave to file for orders of certiorari and mandamus for a second time and that the same is unknown in law. The Interested Party contended that when the 21 days that had already been granted to the Ex-parte Applicant lapsed, no application for judicial review can be made in the circumstances. He added that the second application for leave amounts to an abuse of the court process.
4. The Interested Party contended that the provisions of Order 53 Rule 3 (1) are couched in mandatory terms and ought to have been complied with. He urged the court to strike out the second application for leave adding that no party would suffer prejudice if the orders sought are granted.
5. The Ex-parte Applicant filed a replying affidavit on 3rd January, 2024. He averred that the substantive Notice of Motion was filed on 11th October, 2023 which was within the 21 days that had been granted by the court. That in the application dated 11th October, 2023, the Ex-parte Applicant stated that he was relying on the initial statement and verifying affidavit dated 3rd October, 2023 and hence the instant application is an abuse of the court process.
6. It was averred that the instant application intends to delay the course of justice and deny the Ex-parte Applicant his ancestral land. The court was urged to dismiss the application with costs.
7. The second application was filed by the Ex-parte Applicant on 18th January, 2024. The following orders were sought: -
 1. Spent
 2. Spent
 3. This Honourable Court do grant leave to the applicant to amend the application under Notice of Motion filed on 11th October, 2023.
 4. The amended Notice of Motion attached herein be deemed as duly filed.
 5. This Honourable Court be pleased to exercise its discretion and allow the amendment with reasonable throw away costs as it deems fit and just to grant.
8. In support of the application, the Ex-parte Applicant averred that he filed the substantive Notice of Motion dated 11/10/2023 in accordance with the court's directions issued at the hearing of the application for leave. That the application dated 11/10/2023 was served upon the Interested Party and the Respondents within the prescribed time. He added that upon filing, his advocate discovered that her staff had made errors on the said application by duplicating the prayers in the initial chamber summons application.



9. The Ex-parte Applicant averred that after the discovery of the errors, the need to amend the application arose in order to cure the typographical errors. He further averred that the mistakes of an advocate should not be visited upon an innocent client. He stated that he was willing to pay throw away costs for the said mistakes and urged the court to allow the application in the interest of justice.
10. There was no reply to the application dated 18th January, 2024.
11. Directions were issued for the disposal of both applications by way of written submissions. On the Ex-parte Applicant filed his submissions dated 18th July, 2024.
12. On his behalf, Counsel reiterated the Ex-parte Applicant's averments to the supporting affidavit sworn on 18th January, 2024. Counsel submitted that the only issue for determination is whether the court has inherent jurisdiction to allow the application for amendment as sought. Counsel contended that the court has power to do justice to the parties provided that no prejudice is caused to the opposing party.
13. Counsel submitted that the application for amendment had been made without inordinate delay. It was further submitted that the amendment sought would allow the parties an opportunity to ventilate their respective cases and have the issues in controversy determined on merit. Counsel concluded his submissions stating that the new constitutional dispensation obligates the court to administer substantive justice without being pegged back by procedural technicalities.
14. The sole issue for determination is whether the Ex-parte Applicant ought to be granted leave for the amendment of the Notice of motion dated 11th October, 2023.
15. The amendment of pleadings is a discretionary power vested with the court. Section 100 of the *Civil Procedure Act* outlines as follows: -

‘The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.’
16. The principles that govern the exercise of such discretion were elucidated by the Court of Appeal in *Central Kenya Ltd v Trust Bank Ltd* [2000] 2 EA 365 (CAK) where it was observed as follows:-

“The amendment of pleadings and joinder of parties was aimed at allowing a litigant to plead the whole of the claim he was entitled to make in respect of his cause of action. A party would be allowed to make such amendments of pleadings as were necessary for determining the real issue in controversy or avoiding a multiplicity of suits provided

 - (i) there had been no undue delay,
 - (ii) no new or inconsistent cause of action was introduced,
 - (iii) no vested interest or accrued legal right was affected, and
 - (iv) the amendment could be allowed without injustice to the other side. Accordingly, all amendments should be freely allowed at any stage of the proceedings, provided that the amendment or joinder did not result in prejudice or injustice to the other party that could not be properly compensated for in costs; *Beoco Ltd v Alfa Laval Co Ltd* [1994] 4 All ER 464 adopted.”



17. A perusal of the amended Notice of motion annexed as Exhibit “KIN1” to the supporting affidavit of the Ex-parte Applicant reveals that the amendments sought are with respect to prayers 1, 2, 3 and 4 which featured in the chamber summons dated 3rd October, 2023. The Applicant indicated that even though he complied with the timelines issued on 4th October, 2023, the ensuing Notice of Motion had errors which are apparent on the face of the application as similar orders to those made earlier at leave stage were repeated.
18. Counsel attributed the errors on the face of the application to the mistake of staff at her office. The application for amendment was made on 18th January, 2024 which is a period of about three months after the Notice of Motion dated 11th October, 2023 was filed. The delay in making the application is not inordinate considering that the Interested Party had made an application to strike out the impugned Notice of Motion in the intervening period.
19. In *Essanji & Another v Solanki* [1968] EA 218, the Court aptly held as follows:-
- “The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that error and lapses should not necessarily debar a litigant from the pursuit of his rights.”
20. The proposed amendments are material to the suit in that they bring out clarity in the pleadings by removing inconsistent prayers. Since the cause of action remains the same and no prejudice has been expressed to be suffered by the Interested Party, the amendment should be allowed. The mistake of counsel has been explained and the same is excusable.
21. To buttress the above position, the Court in *Muleya v Common Market for Eastern and Southern Africa and another* (1) [2003] 1 EA 173 (COMESA) held as follows: -
- “In light of all the above, the conclusion is inescapable that the rule to be followed by the court is that an amendment to a party’s pleadings will be allowed if the amendment seeks only to amplify, elaborate, particularize or elucidate on a matter that is already contained in the pleading that is sought to be amended. Conversely, an amendment that seeks to introduce a brand new matter altogether (such as a new cause of action, or a new relief), is to be denied.”
22. Accordingly, the Interested Party’s application dated 20th December, 2023 would be disproportionate to the justice that is demanded of the case. It ought to be dismissed with no orders as to costs.
23. The Ex-parte Applicant’s application for amendment is therefore merited. It ought to be allowed in the following terms: -
1. Leave is hereby granted to the Ex-parte Applicant to amend his Notice of Motion within 7 days.
 2. The Ex-parte Applicant shall pay Kshs.10,000/= as thrown away costs to the Interested Party.

HON. E. O. OBAGA

JUDGE

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 15TH DAY OF MAY, 2025.

In the absence of parties who were aware of the date of ruling.

Court assistant – Steve Musyoki

