



REPUBLIC OF KENYA



Kaptamugh & another v Murkomen & 4 others (Environment & Land Case E017 of 2023) [2025] KEELC 4798 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4798 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E017 OF 2023**

**CK NZILI, J
JUNE 25, 2025**

BETWEEN

JACOB KASEBET KAPTAMUGH 1ST PLAINTIFF

PAUL PKEMOI KIDE 2ND PLAINTIFF

AND

BENJAMIN KIBIWOT MURKOMEN 1ST DEFENDANT

ESAU WANJALA LUSWETI 2ND DEFENDANT

**DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER 3RD
DEFENDANT**

**DIRECTOR, LAND ADJUDICATION & SETTLEMENT OFFICER 4TH
DEFENDANT**

THE ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. Amendment of pleadings is a discretionary power granted to the court under Order 8, Rules 3 and 5 of the Civil Procedure Rules. It may be exercised at any stage of the proceedings on such terms as to costs or otherwise as may be just and in such manner as the court may direct. In *Central Bank of (K) Ltd v Trust Bank Ltd* [2002] EA 365, the court set the considerations as follows:
 - (a) Prejudice to the other parties.
 - (b) Whether the amendments could delay the resolution of the issue in controversy between the parties.
 - (c) If the amendments are necessary for the just determination of the suit.



- (d) The delay is not a ground to decline leave to amend unless the delay could prejudice the parties.
2. An amendment may be refused if it seeks to change the character of the suit or where it will prejudice vested or accrued rights or defences of the opposite party at the time it is made, as held in *Eastern Bakery v Castellino* [1958] E.A 462. It may also be disallowed if it will cause an injustice to the opposite party. An amendment is therefore aimed at assisting the court to determine the true substantive merits of the case. Amendments as held in *Elijah Bii v Kenya Commercial Bank* [2013] eKLR, must be sought timeously, in good faith, and only seek to introduce material facts but not to reframe a case to defeat vested rights or a defence to the opposite party, such as limitation of action.
 3. In this application dated 19/3/2025, the applicants' deponent, Karani O Aggrey, to the affidavit sworn on 11/3/2025 swears that the amendment sought, seeks to join the Settlement Fund Trustees (S.F.T), as a 4th defendant which is a necessary party to the suit, given it was the previous owner of the suit land, before it was allocated, discharged and transferred.
 4. Joinder of parties is allowed under Order 1 Rule 10(2) of the Civil Procedure Rules. A necessary party is one who there must be a right or some relief in respect of the matter, and where it is not possible to pass an effective decree in his absence.
 5. In *Pizza Harvest Ltd v Felix Midigo* [2013] eKLR, the court said that such a party is one to be bound by the result of the action and whose participation is crucial for the effectual and complete settlement of the questions in controversy. In case of a defendant, there must be a relief flowing from that defendant to the plaintiff. See *Gladys Ndungu Nthuki v Letshego (K) Ltd & Mueni Charles Maingi (IP)* [2022] and *Departed Asians Property Custodian Board v Jaffer Brothers Ltd* [1999] EA 55.
 6. Applying the distilled principles from the cited caselaw, the applicant seeks to join the Settlement Fund Trustees, who were the former owners of the suit land before it was discharged. The letter of offer, transfer and the discharge of charge in the list of documents by the plaintiff, dated 22/5/2024, is in the name of the Land Settlement Fund Board of Trustees.
 7. I find the application merited. It is allowed. The amended plaint shall be filed and served within 21 days from the date hereof.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 25TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Karani Grey for Applicant absent

Chelagat for Kwame for the 3rd, 4th and 5th defendants present

Belilei for Chepkurui for 1st and 2nd defendant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

