



REPUBLIC OF KENYA



Waithaka (Suing as the Attorney to Joseph Maina Mburu) v Kiara & 6 others (Environment & Land Case E049 of 2023) [2025] KEELC 5062 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELC 5062 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E049 OF 2023
EK MAKORI, J
JUNE 25, 2025**

BETWEEN

ANTHONY WAITHAKA (SUING AS THE ATTORNEY TO JOSEPH MAINA MBURU) PLAINTIFF

AND

**PAUL MUGECHHE KIARA 1ST DEFENDANT
PETER NGUGI MUCHERU 2ND DEFENDANT
BEATRICE WAMBUI NYANG'AU 3RD DEFENDANT
THOMAS MORARA NYANG'AU 4TH DEFENDANT
THE LAND REGISTRAR -LAMU 5TH DEFENDANT
THE ADJUDICATION & SETTLEMENT OFFICER - LAMU ... 6TH DEFENDANT
THE ATTORNEY GENERAL 7TH DEFENDANT**

RULING

1. The court reviews the application submitted on March 18, 2025, by the plaintiff/applicant, under Order 8 Rule 3 of the Civil Procedure Rules. The prayers sought aim to amend the plaint, mainly to replace the current donee with the actual donor of the Power of Attorney held by the current plaintiff.
2. The court directed that the application be argued through written submissions. Both Mr. Mutethia, the learned counsel for the applicant, and Mr. Soita, the learned counsel for the 1st to 4th respondent, complied.
3. Based on the averments and submissions of the parties, the primary issue for the court's determination is whether to permit the amendment and who should bear the costs of the application.



4. It is sufficient to observe that the present application was initiated in response to developments during the hearing (cross-examination), whereby it was ascertained that the plaintiff had improperly filed the suit in his own name without prior approval from the court. The plaintiff/applicant seeks to rectify this defect, along with others identified during cross-examination while the matter was being heard in court.
5. The 1st, 2nd, 3rd, and 4th defendants/respondents wish to oppose the application due to significant delays and lack of merit.
6. As established in *Inter Tropical Timber Trading Limited v Kenya Power and Lighting Company Ltd* [2021] eKLR, a decision cited by the 1st to 4th respondent affirming the correct legal position — leave to amend is a discretionary remedy that must be exercised judiciously; it may be denied if it can be inferred that, if granted, it would prejudice the opposing party.
7. The court shall refrain from denying leave to amend unless it is satisfied that the applying party was acting in bad faith; through their oversight, they have caused some injury to their opponent that cannot be remedied by damages or other means. See *St. Patrick's Hill School Limited v. Bank of Africa Kenya Limited* [2018] eKLR.
8. In *Lewar Ventures Limited v Equity Bank (K) Limited* [2022] KEHC 998 EKLR, the court clarified that the legal considerations for amending pleadings are:
 - (a) the amendment should not introduce new and conflicting causes of action or issues;
 - (b) the amendment should be made promptly; and
 - (c) it should not affect any vested interests or accrued legal rights, nor should it prejudice the other party.
9. It is acknowledged that the proposed amendments aim to have the Donor of the Power of Attorney join and participate in this litigation. This acknowledgment was made after deficiencies were identified in the Donee's case, indicating that no leave had been sought prior to the commencement of these proceedings by the Donee.
10. In my view, the proposed amendments are unnecessary, and there is no evidence showing that without them, the plaintiff could not proceed with his case. Under Order 9, Rule 2(a) of the Civil Procedure Rules, someone acting under a Power of Attorney has all the authority granted by the Donor in the properly registered document, which eliminates the need for the Donor to testify or participate in proceedings as suggested in the intended amendments.
11. In the current case, the matter has reached a late stage where the plaintiff has presented his evidence and undergone thorough cross-examination. As a result, the application has been filed with significant delay, which cannot be justified except to suggest that the plaintiff/applicant is eager to correct a major flaw in his pleading, thus gaining an advantage over the respondents.
12. In any event, it remains entirely unclear what the substitution could accomplish, given that the plaintiff possesses full authority from the donor to act on their behalf. In other words, any testimony the donor of the Power of Attorney wishes to provide in order to clarify the issues falls within the powers of the plaintiff/applicant herein. It would amount to duplication or a new cause of action with a tendency to alter the foundation of the suit entirely.
13. In short, the application dated March 18, 2025, lacks merit and is dismissed with costs.



DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 25TH DAY OF JUNE 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Muteithia, for the Plaintiff

Mr. Soita for the 1st – 4th Defendants

Ms. Ekiru, for the 5th – 7th Defendants

Happy: Court Assistant

