



REPUBLIC OF KENYA



**Lihanda & another v Ayiga & 7 others (Environment & Land Case E010 of 2023) [2025] KEELC 4693 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4693 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT & LAND CASE E010 OF 2023  
EC CHERONO, J  
JUNE 19, 2025**

**BETWEEN**

**PATRICK MUSUNGU LIHANDA ..... 1<sup>ST</sup> PLAINTIFF**

**NEBERT MISIGO MUDAKI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**REV. ELKANAH SALAMBA AYIGA ..... 1<sup>ST</sup> DEFENDANT**

**REV. JAMES ONDIEKI OGENDI ..... 2<sup>ND</sup> DEFENDANT**

**REV. ZEDEKIAH MATATA ORERA ..... 3<sup>RD</sup> DEFENDANT**

**REV. RUTH WERUNGA ..... 4<sup>TH</sup> DEFENDANT**

**NATIONAL LAND COMMISSION ..... 5<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 6<sup>TH</sup> DEFENDANT**

**BUNGOMA LAND REGISTRAR ..... 7<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before me is the Notice of Motion application brought by the plaintiffs/Applicants dated 19<sup>th</sup> March 2025 seeking the following orders;
  - a. This Honourable Court be pleased to grant the plaintiff leave to amend his plaint in the manner and style as annexed hereto and upon payment of requisite filing fees be deemed as properly filed.
  - b. Cost of this application be in the cause.



2. The application is based on 16 grounds apparent on the face of the said application supported by the affidavit of one Kenneth M. Adiara sworn on even date. In the supporting affidavit, the deponent stated that at the time of filing this suit, the Lease to the suit land parcel NO. Bungoma Municipality/607 had not been issued and when the Title deed was subsequently issued, the Land Registrar became unavailable forcing them to institute the present suit but during the subsistence of the case, they learnt that a title deed had been issued in the name of Pentecostal Assemblies Of God Kenya which is the proper legal entity of the land. He stated that the title deed to the suit land is in the hands of the Defendants and ought to be surrendered to the Applicants. He deposed that the proposed amendment seeks to include a prayer for an order directing the Defendants to surrender the Title Deed to the Applicants. He stated that the proposed amendment is intended to bring clarity to the issues in controversy and that the defendants will not suffer any prejudice if the proposed amendments are allowed.
3. The application is opposed by REV. Ruth Werunga, the 4<sup>th</sup> Respondent herein vide a Replying affidavit sworn on 3<sup>rd</sup> April, 2025. According to the 4<sup>th</sup> Respondent, the proposed Amendment seeks to introduce a new cause of action. She stated that the proposed amendment will be prejudicial since she has filed another case at the Magistrates' court at Bungoma pending hearing and determination over the same land parcel NO. Bungoma/Municipality /607 being Bungoma CM-ELC NO. E196 of 2025
4. I have considered the application dated 19/03/2025, the supporting affidavit, the annexures thereto, the Replying affidavit by the 4<sup>th</sup> Respondent and the submissions by the parties. The gist of the Applicants' application is to amend the plaint in terms of the draft amended plaint annexed to the supporting affidavit. I have looked at the draft amended plaint and note that the plaintiffs are seeking to add a prayer/order directing the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants to surrender the Certificate of Lease issued to the plaintiffs on 27<sup>th</sup> May 2023.
5. It is trite that amendment of pleading is a discretionary power given to the courts to be exercised judicially and not whimsically. Order 8 Rule 3 of the Civil Procedure Act which is the applicable law provides as follows;
  - “ (1) Subject to order 1, rules 9 and 10, order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings
  - (2). Where an application to the court for leave to make an amendment such as is mentioned in sub rule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such subrule if it thinks just so to do.
  - (3) An amendment to correct the name of a party may be allowed under subrule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.
  - (4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under subrule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued.
  - (5) An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arise out of the same facts



or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment...”

6. From the provisions of the law, the general rule is that amendment of pleadings should be allowed freely at any time as was held in the case of Joseph Ochieng & 2 Others *v First National Bank of Chicago*, [Civil Appeal NO. 149 of 1991](#) where the Court observed as follows;

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendments sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; 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 reply on limitation acts.”

7. Having looked at the draft amendment, it is my view that the proposed amendments are not idle nor useless and are made in good faith. I also find that no indication has been made that if the proposed amendments are allowed, it would introduce a new case or new ground of defence or deprive the defendants their right to reply on limitation Acts.

8. In view of the matters aforementioned, I find the Notice of Motion application dated 19<sup>th</sup> March 2025 is merited and the same is hereby allowed as follows;

1. The Plaintiffs/Applicants are hereby granted leave to amend, file and serve the plaint in terms of the draft annexed to the supporting affidavit sworn by REV, Kenneth M. Adiara within 7 days from the date of this Ruling.
2. The costs of the application shall be costs in the cause.

**READ, DELIVERED AND SIGNED AT BUNGOMA THIS 19<sup>TH</sup> DAY OF JUNE, 2025**

**HON. E.C CHERONO**

**ELC JUDGE**

In the presence of;

Mr. Karani for the Plaintiff/Applicant.

M/S Wesonga H/B for Mr. Bwonchiri for the 4<sup>th</sup> Defendant.

Bett C/A.

