



**Prilscot Company Limited v Kiilu (Environment and Land Case E026 of 2022) [2025] KEELC 6194 (KLR) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6194 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CASE E026 OF 2022  
NA MATHEKA, J  
SEPTEMBER 23, 2025**

**BETWEEN**

**PRILSCOT COMPANY LIMITED ..... PLAINTIFF**

**AND**

**LUCIA MUTHUSI KIILU ..... DEFENDANT**

**RULING**

1. The application is dated 25<sup>th</sup> March 2025 and is brought under Order 1 Rule 10(2), Order 8 Rule 3(1), 3(2) and (3), Rule 5(1) and Rule 8, Order 51 rule 1 of the *Civil Procedure Rules*, Section 1A, 1B, 1C and 100 of the *Civil Procedure Act* seeking the following orders;
  1. That the Honourable Court be pleased to grant leave to the Plaintiff/Applicant to amend the Plaintiff in term of the annexed draft Amended Plaintiff.
  2. That the draft Amended Plaintiff herein be deemed as duly filed subject to the payment of the requisite court filing fees.
  3. That the costs of this application be in the cause.
2. It is supported by the annexed affidavit of Luka Kipkorir Kigen, on the following grounds that the intended amendments are intended to enable the court to determine the real question in controversy between the parties. That the object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings. That further the intended amendments herein will serve to demonstrate the crux of the dispute and goes to all “more meat” into the Plaintiff’s case.



That put differently, the proposed amendments are intended to enable the complete and effectual determination of all the issues in controversy between the parties.

3. Thus, the overriding consideration in an application for leave for amendment ought to be whether the amendments sought are necessary for the determination of the suit and whether the delay in bringing the application for amendment is likely to prejudice the opposite party beyond compensation in costs. The court has unfettered discretion to allow amendment of pleadings 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.
4. That the law expressly provides that the court has discretionary power to order that the pleadings be amended at any stage before Judgment for purposes of determining the real question or issue which has been raised by parties. The discretionary power is exercised so as to do justice to the case. However, the said discretion must be exercised judiciously and not whimsically. That overall no injustice will be suffered by the other side if the amendments are accepted. In any case they will have the opportunity to cross-examine the Plaintiff on it and even call for rebuttal evidence.
5. This court has considered the application and the submissions therein. Order 8 Rule 3 of the [Civil Procedure Rules](#) provides for amendment of pleadings with leave of court 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.
6. Further, Order 8, rule 5 gives the court the general power to amend.
  - 5.(1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.
7. The Respondent strongly opposed the application and pointed out that the Applicant is guilty of laches. That they have not established any new facts or documents that have come into existence since the institution of this suit. The subject matter is a contract that was entered into in 2005. That the amendment is an afterthought and meant to deal the suit.
8. Be that as it may, Section 1A of the [Civil Procedure Act](#) provides for the overriding objective of the [Civil Procedure Act](#) and the rules made thereunder and provides as follows:
  - 1A The overriding objective of this Act and the rules made hereunder is to
    - (1) facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
    - (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
    - (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.
9. Section 1B of the same [Act](#), on the other hand provides for the duty of court and states:



- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims —
  - (a) the just determination of the proceedings;
  - (b) the efficient disposal of the business of the Court;
  - (c) the efficient use of the available judicial and administrative resources;
  - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
  - (e) the use of suitable technology.
  
10. The proposed amendment according to the Plaintiff seeks to raise issues going to the root of the agreement between the parties herein including the question of issuance of professional undertaking, the supply of the completion documents and whether or not the 21 days completion Notice was issued making time of essence and whether or not there was a breach of the sale agreement. That there is also the claim for specific performance and the question of the Land Control Board consent. All these issues need to be fully ventilated and a complete and effectual determination arrived at by the court and therefore the need for the amendments south herein to be effected before the case goes for full trial.
  
11. In the case of *Central Kenya Ltd vs Trust Bank & 4 Others*, CA No. 222 of 1998, the court stated that, the guiding principle in amendment of pleadings and joinder of parties is that:
 

all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.”
  
12. On the issue of amendment of pleadings in the case of *AAT Holdings Limited vs Diamond Shields International Ltd* (2014) eKLR, the court cited the principles as set out by the Court of Appeal in *Central Kenya Ltd Case No. 222 of 1998* as shown below;
  - (i) That are necessary for determining the real question in controversy.
  - (ii) To avoid multiplicity of suits provided there has been no undue delay.
  - (iii) Only where no new or inconsistent cause of action is introduced i.e. if the new cause of action does not arise out of the same facts or substantially the same facts as a cause of action.
  - (iv) That no vested interest or accrued legal rights is affected; and
  - (v) So long as it does not occasion prejudice or injustice to the other side which cannot be properly compensated for in costs.
  
13. It is quite clear from decided cases that the discretion of a trial court to allow amendments of a Plaintiff is wide and unfettered except it should be exercised judicially upon the foregoing defined principles. In the case of *Isaac Awuondo vs Surgipharm Ltd & Another* (2011) eKLR the Court of Appeal had the following to say:
 

In *Moi University v Vishva Builders Limited* - Civil Appeal No. 296 of 2004 (unreported) this Court said:-

The law is now settled that if the defence raises even one bona fide triable issue, then the Defendant must be given leave to defend. In this appeal we traced the



history from the commencement of relationship between the parties herein. The dispute arises out of a building contract. In the initial Complaint the sum claimed was well over 300 million but this was scaled down by various amendments until the final figure claimed was Shs.185,305,011.30/- We have looked at the pleadings and the history of the matter and it would appear to us that the appellant had serious issues raised in its defence. As we know even one triable issue would be sufficient – see *H.D Hasmani v. Banque Du Congo Belge* (1938) 5 E.A.C.A 89. We must however hasten to add that a triable issue does not mean one that will succeed. Indeed, in *Patel vs. E.A. Cargo Handling Services Ltd.* [1974] E.A. 75 at P. 76 Duffus P. said:-

In this respect defence on the merits does not mean, in my view a defence that must succeed, it means as SHERIDAN, J put it “a triable issue” that is an issue which raises a prima facie defence and which should go to trial for adjudication.”

14. Be that as it may, I have perused the proposed Amended Complaint and I find it seeks to narrate sections of the sale agreement and introduce other prayers. I find that terms of the contract can all be canvassed during the hearing and this application is merely delaying the hearing of the suit. The issue whether or not the sale of land agreement herein was validly terminated pursuant to its terms and conditions, is a matter of evidence to be canvassed during the trial. In these circumstances, I find that this application contravenes order 1 rule 8 of the *Civil Procedure Rules*. Parties are advised to comply with order 11 and set the suit down for hearing. I find that this application is not merited and is dismissed with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**N.A. MATHEKA**

**JUDGE**

