

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ELCLC NO. E071 OF 2024

PETER GICIRA AND 21 OTHERS.....
PLAINTIFFS

VERSUS

OSMAN AHMED KAHIA.....
.....DEFENDANT

RULING

A. Plaintiffs' Application

1. By a notice of motion dated 09.06.2025 filed pursuant to *Order 8 Rules 3, 4, 5, 6, 7 and 8 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act (the Act) and all other enabling provisions of the law*, the plaintiffs sought leave to amend their plaint.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Zachary Murithi on 09.06.2025. It was contended that pursuant to the leave of court granted on 05.05.2025, the plaintiffs filed additional evidence on 26.05.2025. It was further

contended that in light of the evidence filed, the plaintiffs need to amend their plaint to bring all issues in controversy to the attention of the court for a just determination.

3. The defendant opposed the application vide the grounds of opposition dated 25.08.2025. He stated that the application was misconceived in law and in fact. Further, it was said that the application was an abuse of the court process meant to delay the determination of the pending suit. The court was urged to dismiss the said application which was said not to disclose any new issue between the parties.
4. When the application was listed for *inter partes* hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The plaintiffs filed submissions in support of their application on 24.06.2025 while the defendant filed submissions on 25.08.2025.
5. The court has perused the application, the response thereto and the material on record as well as the submissions made by all counsel. The court is of the view that the following key issues arise for determination herein:

- a. *Whether the court ought to grant leave to the plaintiffs to amend their plaint.*
- b. *Who shall bear the costs of the application.*

6. The court allows amendments to pleadings for the sole purpose of determining the real question in controversy between the parties. The Court of Appeal stated in the case of *Central Kenya Ltd -vs- Trust Bank Ltd & 5 others* [2000] eKLR that;

“The settled rule with regard to amendment of pleadings has been concisely stated in Vol.2, 6th Ed. at P.2245, of the AIR Commentaries on the Indian Civil Procedure Code by Chittaley and Rao, in which the learned authors state: “that a party is allowed to make such amendments as maybe necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.”

7. In the same case, the court further held that;

“It is also trite law that as far as possible a litigant should plead the whole of the claim which he is entitled to make in respect of his cause of action. Otherwise the court will not later permit him to reopen the same subject of litigation (see O.II rule 1 of the Civil Procedure Rule) only

because they have from negligence, inadvertence or accident omitted that part of their case. Amendment of pleadings and joinder of parties is meant to obviate this. Hence the guiding principle in applications for leave to amend 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 (see, Beoco Ltd v. Alfa Laval Co. Ltd [1994]4 ALL ER. 464)."

8. The proposed amendments as contained in the draft amended plaint attached to the supporting affidavit have expounded the scope of particulars of fraud. In addition, the plaintiffs have sought further orders including eviction orders, general damages and mandatory injunction orders. These proposed amendments are consistent with the original plaint and only aim to clarify the plaintiffs' case. The defendant has not established that the proposed amendments will in any way cause prejudice to him that cannot be compensated by an award of damages. The court is of the view that the proposed amendments are necessary for the effectual and complete adjudication of all the questions involved in the suit.

9. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to *Section 27 of the Civil Procedure Act (Cap 21)*. A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. However, since the main suit is still pending hearing the court is of the view that the costs of the application should be in the cause.

10. The upshot of the foregoing is that the court finds and holds that the plaintiffs' application dated 09.06.2025 is merited. Accordingly, the court shall make the following orders for disposal thereof;

- a. Leave be and is hereby granted to the plaintiffs to amend their plaint.*
- b. The plaintiffs shall file and serve the amended plaint within 14 days from the date hereof.*
- c. The defendant is granted leave to file and serve any responses deemed necessary to the amended plaint within 14 days upon service.*
- d. The costs of the application shall be in the cause.*

Ruling dated and signed at Mombasa and delivered virtually via Microsoft Teams on this 16th **day** of October **2025**.

.....

Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Mr. Kioko for the plaintiffs

Mr. Asige J for the defendant

ORIGINAL