



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

COUNTY COURT NAME: NAKURU ENVIRONMENT AND LAND COURT

CASE NUMBER: ELCC/E027/2022

SIMON KIPSANG, MICHAEL CHEBON, MICHAEL KORIR (SUING FOR AND ON BEHALF OF THEMSELVES & KERES SELF HELP GROUP) VS HON. GIDEON KIPSIELEL TOWETT MOI AND NAKURU DISTRICT LAND REGISTRAR

### RULING

#### BRIEF FACTS

The 1st Defendant/Applicant filed the instant application dated 17th July, 2025 seeking the following orders:

1. Spent.
2. THAT the Plaintiffs' amended plaint dated 24th April, 2023 be struck out in its entirety for being filed without leave of the Honourable Court, contrary to Order 2 Rule 15 of the Civil Procedure Rules, 2010.
3. THAT in the alternative, this Honourable Court be pleased to expunge from the record the Plaintiffs' amended plaint dated 24th April, 2023 and all consequential pleadings and documents filed thereon.
4. The Plaintiffs' to meet the cost of this application.

The Application was based on grounds set out and supported by a lengthy affidavit of GIDEON KIPSIELEI TOWETT MOI the 1st Defendant/Applicant sworn on 17th July, 2025.

He stated that he was the registered owner of the parcel of land measuring 40 acres out of LR No. 10978/8 now subdivided and registered as Rongai/Rongai Block 6/2. He further stated that in 2002 the 1st, 2nd and 3rd Plaintiffs' lodged a suit in the ELC vide the original plaint on 23rd MAY, 2022 seeking to settle their members. He added that without having sought the requisite leave of the court, they filed and served an amended plaint dated 24th April, 2023 filed on 2nd May, 2023. He stated that pleadings had closed by virtue of the Defendant having filed a statement of defence on 23rd June, 2022 and therefore any amendment required leave of the court. He also stated that the amended plaint introduced substantial changes to the original cause of action including introduction of a new plaintiff and a new defendant and omission of the 1st plaintiff. He added that the irregularly amended plaint prejudiced him since he is now compelled to respond to new and substantially different cause of action without procedural fairness. He stated that the amended plaint was fatally



defective and an abuse of the court process. He stated that unless the amended plaintiff is struck out or expunged, he stood to suffer delay and prejudice in defending an irregular suit.

#### Response

The 3rd Plaintiff filed his replying affidavit sworn on 27th August, 2025 where he averred that upon being served with the application, their advocate severally sought for an opportunity in vain so as to peruse the court file in order to file an accurate response. He further averred that the application was filed in bad faith as it was lodged on the eve of the hearing. He added that the provisions of law under which the application was filed are not applicable since the complaint is about an amended plaintiff and not striking out of a suit. He also averred that no specific prejudice would be occasioned on the Applicant by the amended plaintiff since it has only removed and replaces a plaintiff and introduced a defendant without change of the facts pleaded. He averred that if the amended plaintiff is struck out, it would not determine the matter since the previous plaintiff will still be on record. He averred that the Applicant ought to have filed an application under Order 8 Rule 2 of the Civil Procedure Rules for the court to disallow the amendment that was not done within 14 days and has since been overtaken by events. He also averred that they filed an application dated 11th April, 2023 that sought leave to amend the plaintiff. He averred that the amended plaintiff was properly before the court for determination. He urged the court to dismiss the application with costs.

#### Submissions

Counsel for the Applicant filed his submissions dated 29th July, 2025 where he identified one issue for determination, whether the amendments made to the plaintiff are permissible under the applicable rules of civil procedure. He relied on Order 2 Rule 15 of the Civil Procedure Rules and submits that the original plaintiff dated 23rd May, 2022 had different parties to the amended plaintiff dated 2nd May, 2023 thus raising questions of integrity on the part of the Plaintiffs'/Respondents. He further submits that at no point in time were the Respondents granted leave to amend their plaintiff. He relied on the case of *Shah V County Government of Trans nzoia & Another* (Environment and Land Case 11 of 2019) 2025 eKLR. He submits that it is trite law that by virtue of the Defendant having filed a statement of defence dated 23rd June, 2022, pleadings had closed and therefore any amendment would require leave of the court. He also submits that the Respondents filed the amended plaintiff out of time. He relied on the case of *Nicholas Kiptoo arap Korir Salat V IEBC & 7 Others*, Supreme Court Application No. 16 of 2014 eKLR.

It was his submission that Sections 1A and 1B of the Civil Procedure Act demands that parties comply with procedural rules so as to enable just, expeditious and proportionate resolution of suits. In conclusion, he urged the court to grant them the prayers as sought in the instant application.

Counsel for the Respondents on the other hand filed his submissions dated 27th August, 2025 where he reiterated the contents of the 3rd Respondent's replying affidavit dated 27th August, 2025. He urged the court to dismiss the application with costs for lack of merit. He cited a number of cases including *Eastern Bakery V Catelino* (1958) EA 46 and *Prafulla Enterprises Ltd V Norlake Investment Ltd* (Kisumu HCC No. 145 of 1997).

#### Analysis and Determination

This court has carefully considered the application, replying affidavit and submissions and the main issue for determination is whether the application is merited.

Order 1 Rule 10 of the Civil Procedure Rules provides as follows:

"The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added."



In the instant suit, it is not in dispute that the Respondents vide an application dated 11th April, 2023 sought leave to amend their plaint to include the 3rd Defendant. I have taken the liberty to peruse the court record and it is a fact that on 18th April, 2023, the said application was allowed by consent. Notably, counsel for the 1st Defendant was present in court when the application was allowed and therefore he was very much aware of the same.

In light of the above, it is this court's finding that the present application is misplaced and has since been overtaken by events. The upshot of the above is that the application dated 17th July, 2025 is without merit and is therefore dismissed with costs. It is so ordered.

SIGNED BY/FOR:  
HON. JUSTICE ANTONY O. OMBWAYO



THE JUDICIARY OF KENYA. NAKURU  
ENVIRONMENT AND LAND COURT  
ENVIRONMENT AND LAND COURT  
DATE: 2025-10-02 12:32:25