



**Langat & another (Suing on Behalf of Talai Community Clan Organization)
v National Housing Corporation & another (Environment and Land Petition
E002 of 2023) [2025] KEELC 6690 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6690 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT AND LAND PETITION E002 OF 2023
LA OMOLLO, J
OCTOBER 2, 2025**

BETWEEN

DAVID KIPRONO LANGAT 1ST PETITIONER

NGENO K KENET 2ND PETITIONER

SUING ON BEHALF OF TALAI COMMUNITY CLAN ORGANIZATION

AND

NATIONAL HOUSING CORPORATION RESPONDENT

AND

THE ATTORNEY GENERAL PROPOSED RESPONDENT

RULING

1. This ruling is in respect of the Petitioners/Applicants Notice of Motion application dated 20th January, 2025. It is expressed to be brought under Sections 1A & 1B of the *Civil Procedure Act* and Order 8 Rule 3 & 5 of the Civil Procedure Rules.
2. The application seeks the following orders;
 - a. Spent
 - b. The Petitioners be issued leave to amend the Petition and the draft amended Petition be deemed as dully filed. (sic)
 - c. Costs be in the course.
3. The application is based on the grounds on its face and the supporting affidavit of Ngeno K. Kenet the 2nd Petitioner/Applicant.



Factual Background.

4. The Petitioners/Applicants commenced the present proceedings vide the Petition dated 9th October, 2023 where they seek the following prayers;
 - a. An order of prohibition do issue stopping Respondent (sic) whether by themselves (sic) or agents from claiming ownership or in whatsoever manner dealing with LR No. 631/1834-1883.
 - b. An order do issue for compensation and/or Resettlement of occupants in LR No. 631/1834-1883 prior of (sic) any eviction by the Respondent.
 - c. A declaration that LR No /631/1834-1883 is a community Land belonging to the Talai Community.
 - d. An order cancelling any entry's (sic) made in favour of Respondent (sic) as against the Applicants.
 - e. Any other relief that Court may deem just and expedient in the circumstances.
 - f. That the costs of this Petition be borne by the Respondent.
5. As at the time of writing of this ruling, the Respondent has not filed a response to the Petition.
6. The application under consideration first came up for hearing on 22nd January, 2025 when the Court directed that it be served upon the Respondent.
7. On 13th February, 2025 the Court issued directions that the application be canvassed by way of written submissions.
8. The matter was mentioned to confirm filing of submissions on 11th March, 2025 and reserved for ruling.

The Petitioners/Applicants Contention.

9. The affidavit in support of the application is sworn by the 2nd Petitioner/Applicant.
10. He contends that when they instituted the present Petition, they failed to plead crucial information.
11. He also contends that he desires that the present suit captures all the issues in contention.
12. He further contends that he has attached to his affidavit in support of the application a draft amended Petition that he now wishes that the Court deems as duly filed.
13. It is his contention that the amendment of the Petition will allow the Petitioners to plead the real issues in dispute between the parties herein.
14. It is also his contention that it is in the interest of justice that the matter be certified urgent and leave to amend be granted ex parte.
15. He ends his deposition by stating that if the Petition is not amended, there is a likelihood that the Court may not capture the foundational facts which informs the dispute in relation to the suit property.

The Respondent's Response.

16. In response to the application, the Respondent filed grounds of opposition dated 11th February, 2025.
17. They are as follows;



- a. That the proposed Amended Petition introduces a new cause of action and prayers against a party that is not present in the suit, particularly, the Ministry of Interior and Coordination of National Government.
- b. That the proposed Amended Petition contravenes the doctrine of exhaustion, as the new issues raised relate to historical land injustices, which fall under the purview of the National Land Commission (NLC) in accordance with Article 67(2) of *the Constitution* of Kenya 2010 and Section 5 and 15 of the *National Land Commission Act*, 2012.
- c. That the new issues raised in the proposed Amended Petition were addressed by the National Land Commission, as evidenced in the NLC and Parliamentary Report annexed to paragraph 11 of the Supporting Affidavit sworn by Ngeno K. Kenet dated 9th October 2023.
- d. That the additional prayers, particularly (a) and (b), in the proposed Amended Petition are a disguise to overrule the NLC and Parliamentary Report mentioned above, instead of seeking judicial review under Section 9 of the *Fair Administrative Action Act*, 2015.
- e. That contrary to the provisions of Order 8, Rule 7 (2) of the Civil Procedure Rules, the Applicant did not strike out paragraph (B) II. of the original Petition but omitted the paragraph entirely in the proposed Amended Petition, to deceive the Court.
- f. That the Application to amend the Petition is made in bad faith and with unreasonable delay. The Honourable Court issued orders on 29th April 2024 for the parties to file their respective submissions to the original Petition but the Applicant failed to oblige.
- g. That the application violates Article 159(2)(b) of *the Constitution* of Kenya 2010 since it is intended to delay the timely determination of the dispute.
- h. That the Applicants/Petitioners' reliance on the Laibon Removal Ordinance (1934) is untenable in the present legal framework. The Ordinance was a colonial era policy unfounded in the current Constitutional and Statutory framework.
- i. That the Respondent prays that this Honourable Court dismisses the Application with costs for lack of merit, incompetent, and an abuse of the Court process.

Issues for Determination.

18. The Petitioners/Applicants filed their submissions DATED 16TH February, 2025 on 21ST February, 2025 while the Respondents filed their undated submissions on 10th March, 2025.
19. The Petitioners/Applicants submit that they failed to include the Attorney General in the present Petition.
20. They also submit that the Petition is anchored on the Talai Removal Ordinance of 1934 which requires the input of the Attorney General so that there is clarification on the issue of Compensations and/or resettlement of the occupants of the suit property.
21. They further submit that they intend to amend the Petition and remove the repeated legal and statutory provisions.
22. It is their submissions that they are not introducing a new cause of action as they are only seeking orders directing the Ministry of Interior to ascertain the people affected by the Talai Removal Ordinance.



23. The Petitioners/Applicants rely on Order 8 Rule 3 of the Civil Procedure Rules, the judicial decision of *Eastern Bakery vs Castelino* (1958) EA 461 and reiterate that the Respondent will not be prejudiced in any way if the application is allowed.
24. The Petitioners/Applicants also submit that the Attorney General is already representing the National Housing Corporation and that its inclusion is common practice when instituting suits against government bodies.
25. The Petitioners/Applicants further submit that the general rule is that amendment of pleadings can be done at any time for purposes of determining the real question in controversy between the parties.
26. It is the Petitioners/Applicants submissions that the Court has unfettered discretion to allow pleadings to be amended which discretion should be exercised judicially.
27. The Petitioners/Applicants rely on the judicial decision of *Central Kenya Ltd vs. Appeal No 222 OF 1998* (sic) in support of their submissions.
28. The Petitioners/Applicants conclude their submissions by urging the Court to allow their application as prayed.
29. The Respondent submits on the following issues;
 - a. Whether the Honourable Court should grant leave in favour of the Petitioners to amend their Petition.
 - b. Cost of the application.
30. On the first issue, the Respondent relies on the judicial decision of *Institute for Social Accountability & another vs Parliament of Kenya & 3 Others* [2014] eKLR and submits that the proposed amendments seek to introduce a new cause of action.
31. The Respondent also submits that the cause of action in the initial petition is on ownership of land parcel No. 631/1834-1883. It also raises the issue of whether or not the said parcel of land is community or public land.
32. The Respondent further submits that in the amended Petition, the Petitioners/Applicants intend to raise the issue of whether Kericho Township was declared a settlement area for the Talai Community.
33. It is the Respondent's submissions that it is not privy to information on the property known as Kericho Township to enable it raise a defence.
34. It is also the Respondent's submissions the proposed prayer does not relate to LR No. 631/1834-1883 and therefore the inconsistencies in the cause of action shows that the application lacks merit.
35. The Respondent relies Section 12 of the *Government Proceedings Act*, the judicial decision of *Joseph Ochieng & 2 Others vs First National Bank of Chicago*, Civil Appeal No. 149 of 1991 as was cited in *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] KECA 345 (KLR) and submits that the Petitioners/Applicants are seeking orders against the Ministry of Interior & Coordination of National Government and the Ministry of Lands and Housing but has not joined them to the proceedings to give them an opportunity to respond to the prayers sought.
36. The Respondent also submits that the Plaintiffs/Applicants should file a fresh suit against the Ministry of Interior & Coordination of National Government and the Ministry of Lands and Housing to accord them a fair trial.



37. The Respondent further submits that prayers (a) and (b) sought in the proposed amended Petition were determined by the National Land Commission as they relate to historical land injustices. The Respondent relies on Section 15 of the [National Land Commission Act](#) in support of its submissions.
38. It is the Respondent's submissions that the Petitioners/Applicants in their affidavit sworn on 9th October, 2023 attached to the initial petition, stated that the National Land Commission and Parliament recommended that the Kericho County Government creates a settlement area for the Talai Community.
39. It is also the Respondent's submissions that if the Petitioners/Applicants came across new information with regard to the settlement of the Talai Community in Kericho, they ought to have sought judicial review orders under Section 9 of the Fair Administrative Actions Act.
40. It is further the Respondent's submissions that it (Respondent) is not privy to the historical land injustices allegedly meted out to the Petitioners/Applicants community and it is also a new cause of action.
41. The Respondent submits that this Court has already issued directions that the Petition be canvassed by way of written submissions and the application to amend the petition is therefore an afterthought.
42. On the second issue, the Respondent relies on Section 27 of the Civil Procedure Rules, the judicial decision of Republic vs Rosemary Wairimu Munene Ex parte Applicant v Ihururu Dairy Farmers Co-operative Society Ltd Judicial Review Application No. 6 of 2014 and urges the Court to dismiss the application with costs.

Analysis and determination.

43. Having considered the Petitioners/Applicants application, the response thereto and the rival submissions, my view is that the following issues arise for determination;
 - a. Whether the Petitioners/Applicants should be granted leave to amend their Petition.
 - b. Who should bear costs of the application?

A. Whether the Petitioners/Applicants should be granted leave to amend their Petition.

44. The Petitioners/Applicants are seeking leave to amend their Petition. They contend that the proposed amendments capture foundational facts of the dispute.
45. The Petitioners/Applicants submit that in the amended Petition, they have removed the legal and statutory provisions that were repeated and have correctly framed the prayers sought.
46. The Respondent on the other hand submits that the proposed amendments are introducing a new cause of action as they are inviting this Court to determine whether Kericho Township was declared a settlement area for the Talai Community.
47. The Respondent also submits that the proposed amendments introduce issues relating to historical land injustices that have already been addressed by the National Land Commission.
48. The Respondent contends that in the Draft Amended Petition, the Petitioners/Applicants have omitted Paragraph (B)(ii) of the Petition instead of striking it out.



49. The Respondent also contends that prayers (a) and (b) of the Draft Amended Petition seek orders against the Ministry of Interior and Coordination of National Government and the Ministry of Land, Housing and Urban Development who are not parties or proposed parties to the present proceedings.
50. Rule 18 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 provides as follows on amendment of Constitutional Petitions;
- “A party that wishes to amend its pleadings at any stage of the proceedings may do so with the leave of the Court.”
51. In the judicial decision of *Central Kenya Ltd v Trust Bank Ltd* [2000] 2 EA 365 (CAK) the Court held as follows on the Court’s discretion to allow amendment of pleadings;
- “The amendment of pleadings and joinder of parties was aimed at allowing a litigant to plead the whole of the claim he was entitled to make in respect of his cause of action. A party would be allowed to make such amendments of pleadings as were necessary for determining the real issue in controversy or avoiding a multiplicity of suits provided
- i. there had been no undue delay,
 - ii. no new or inconsistent cause of action was introduced,
 - iii. no vested interest or accrued legal right was affected, and
 - iv. the amendment could be allowed without injustice to the other side. Accordingly, all amendments should be freely allowed at any stage of the proceedings, provided that the amendment or joinder did not result in prejudice or injustice to the other party that could not be properly compensated for in costs; *Beoco Ltd v Alfa Laval Co Ltd* [1994] 4 All ER 464 adopted.” (Emphasis mine)
52. In the judicial decision of *Institute for Social Accountability & another v Parliament of Kenya & 2 others; Commission for the Implementation of the Constitution* (Interested Party) [2014] KEHC 7356 (KLR) the Court held as follows;
17. The issue of amendment of pleadings is not novel and has been the subject of numerous Court decisions, the common denominator being that as a general principle, Courts will normally allow amendment of pleadings at any stage of the proceedings if it can be done without occasioning injustice or prejudice to the other party and which prejudice can be compensated by an award of costs. See generally *Eastern Bakery v Castelino* (1958) EA 461 ; *Ochieng and Others v First National Bank Of Chicago* CA Civil Appeal Number 149 of 1991, *Kenyatta National Hospital v Kenya Commercial Bank Ltd & Another* [2003] 2 EA.
 18. 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.



19. Rule 18 of the Rules clearly stipulates that the Court may permit an amendment at any stage of the proceedings. The Court will normally allow parties to make such amendments as may be necessary for determining the real questions in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, no new or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that the amendment can be allowed without an injustice to the other side.” (Emphasis mine)
53. In the above cited judicial decisions, it was held that parties can be allowed to amend their pleadings at any stage of the proceedings so long as there has been no undue delay, no new cause of action is introduced and the other party will not be prejudiced on account of the proposed amendments.
54. A perusal of the draft Amended Petition shows that the Petitioners/Applicants intend to introduce a 2nd Respondent who is the Attorney General.
55. In the proposed amendments, the Petitioners contend that under the Laibon Removal Ordinance of 1934, Kericho Township was declared a settlement area for the members of the Talai Community.
56. They also contend that the suit property is situated within Kericho Township and is therefore part of their settlement area.
57. It is their contention that the government has encroached on their settlement area thereby systematically displacing them.
58. Under reliefs sought, the Petitioners/Applicants have proposed two amendments under prayers (a) and (b). They are as follows;
- “a). A declaration that Kericho Township was a settlement area for the Talai Community.
- b). That order (sic) do issue directing the government through the Ministry of Interior and Coordination of National Government and the Ministry of Land and Housing & Urban Development to verify and authenticate the number of people affected by the Laibon Removal Ordinance of 1934 with a view of offering settlement and compensation.”
59. As afore stated, the Respondent contends that the draft amended petition introduces prayers against the Ministry of Interior and Coordination of National Government and the Ministry of Land, Housing and Urban Development who are not parties to the present Petition. They are also not proposed parties in the Draft Amended Petition.
60. The Respondent also contends that the draft Amended Petition raises issues of historical land injustices that have already been addressed by the National Land Commission.
61. The Respondent further contends that in the Draft Amended Petition, the Petitioners/Applicants have omitted Paragraph (B) II in its entirety without striking out as provided for under Order 8 Rule 7 (2) of the Civil Procedure Rules.
62. A perusal of the Draft Amended Petition shows that the Petitioners/Applicants have not included the Ministry of Interior and Coordination of National Government and the Ministry of Land, Housing and Urban Development as proposed parties to the suit.



63. As mentioned in the preceding paragraphs, the Petitioners/Applicants are seeking certain prayers against them.
64. In the judicial decision of *Ruth Wanja Mwangi v Samuel Mwaura Njuguna, Naivasha Land Registrar & Attorney General* [2017] KEELC 2451 (KLR) the Court held as follows;
- “Prayer 2 is directed at DCIO Naivasha while prayer 3 is directed at the Registrar of Persons. Both the DCIO Naivasha and the Registrar of Persons are not parties to this suit.
- I have perused the plaint herein and I do not see any case pleaded by the plaintiff against the DCIO Naivasha or against the Registrar of Persons. The Court cannot issue orders against persons who are not parties to the case before it and who have therefore not been given a hearing.”[Emphasis Mine]
65. In the present matter it is evident that the Petitioners/Applicants are intending to amend their Petition and introduce prayers against the aforementioned Ministries which are not parties to the present proceedings. That being the case, I decline to grant leave to the Petitioners/Applicants to make the said amendments.
66. Further, the Respondent contends that that the draft Amended Petition raises issues of historical land injustices that have already been addressed by the National Land Commission.
67. My view is that this Court cannot at this stage pronounce itself on whether or not the issues raised in the draft Amended Petition have already been determined by the National Land Commission. In any event, no evidence of any such determination has been availed.
68. The Respondent also contends that in the Draft Amended Petition, the Petitioners/Applicants have omitted Paragraph (B) II of the Petition in its entirety without striking it out as provided for under Order 8 Rule 7 (2) of the Civil Procedure Rules.
69. The Petitioners/Applicants contend that they have removed the repeated legal and statutory provisions in the draft amended Petition.
70. Order 8 Rule 7 (2) of the Civil Procedure Rules provides as follows;
- “(2) All amendments shall be shown by striking out in red ink all deleted words, but in such a manner as to leave them legible, and by underlining in red ink all added words.”
71. In the judicial decision of *Co-operative Insurance Company of Kenya Limited v Paem Agencies Company Limited* [2014] KEHC 8718 (KLR) the Court held as follows;
- “17. Any pleadings and or documents relied upon by the parties should be self-explanatory. The Court finds that the issue of the underlining of the amended parts in red and the heading of the draft pleading is not a procedural technicality that could be saved by the provisions of Article 159(2) (d) of *the Constitution* of Kenya, 2010. Rather it is a fundamental error that goes into the root of the Plaintiff’s application as it sought that the Amended Plaint be filed and served in terms of the draft Amended Plaint...
19. The Court does not look kindly at parties who do not adhere and follow the laid down procedures and rules. For the reason that the Plaintiff failed to



comply with the Provisions of Order 8 Rule 7(2) of the Civil Procedure Rules, 2010, its application would not succeed.”

72. A perusal of the draft Amended Petition shows that indeed the Petitioners/Applicants have omitted Paragraph B (ii) of the Petition instead of including it and striking it out.

Disposition

73. Taking the foregoing into consideration, I find that the Petitioners/Applicants application dated 20th January, 2025 lacks merit and it is hereby struck out with costs.
74. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 2ND DAY OF OCTOBER, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. for the Petitioners/Applicants.

Mr. Ojwang for the Respondents.

Court Assistant; Mr. Joseph Makori.

