



REPUBLIC OF KENYA



Price Investments Limited v Kenya Airports Authority & 3 others (Environment and Land Case 98 of 2019) [2025] KEELC 6773 (KLR) (9 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6773 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 98 OF 2019**

**CK YANO, J
OCTOBER 9, 2025**

BETWEEN

PRICE INVESTMENTS LIMITED PLAINTIFF

AND

KENYA AIRPORTS AUTHORITY 1ST DEFENDANT

THE LAND REGISTRAR, UASIN GISHU COUNTY 2ND DEFENDANT

THE COUNTY GOVERNMENT OF UASIN GISHU 3RD DEFENDANT

THE ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. This ruling is in respect to two applications dated 11.02.2025 and 28.02.2025 filed by the 1st, 2nd and 4th Defendants/Applicants.
2. In the Notice of Motion dated 11th February, 2025 and filed under certificate of urgency, the 1st and 2nd Defendants/Applicants sought the following orders: -
 - i. Spent.
 - ii. That this Honourable Court grants leave to the 1st and 2nd Defendants to file a Further List of Documents and witnesses.
 - iii. That the annexed Further List of Documents be deemed as duly filed and served upon the Plaintiff and the 3rd Defendant (erroneously indicated as 1st defendant)
 - iv. That costs of this Application be provided for.
3. The application is based on the 5 grounds on the face thereof and on the Supporting Affidavit sworn by Ms. Winnie Cheruiyot, a Principal State Counsel who has conduct of the matter on behalf of the



- Defendants/Applicants. She stated that pleadings have been closed and the matter have been certified for hearing hence the instant application seeking leave to file the Further List of Documents and witnesses.
4. It was her contention that the said documents, which include various correspondences and official records from the Ministry of Lands and Physical Planning, the Lands Office and other relevant entities concerning the subject property, are essential to the fair determination of the suit. She annexed a list of the said documents and witnesses, marked as “WJC1” and “WJC2” respectively.
 5. It is her contention that the omission to file the said documents earlier was not deliberate but was occasioned by the lengthy process of obtaining certified copies from the relevant offices.
 6. She further claimed that neither the plaintiff nor the other defendant will suffer prejudice if the said documents are admitted at this stage for the reason that the matter is yet to proceed to full hearing.
 7. In conclusion, she urged the court to allow the application and grant leave to enable the Applicants to file their Further List of Documents and witnesses in the interest of justice and fair trial.
 8. The second application was the Notice of Motion dated 28th February, 2025, wherein the 1st 2nd and 4th Defendants/Applicants sought the following orders: -
 - i. That this Honourable Court grants leave to the 1st, 2nd and 4th Defendants to file a Further Amended Defence.
 - ii. That the annexed Further Amended Defence be deemed as duly filed and served upon the Plaintiff and the 3rd Defendant.
 - iii. That the costs of this Application be provided for.
 9. The application is premised on the 5 grounds on the face thereof and on the Supporting Affidavit sworn on 03.03.2025 by Ms. Winnie Cheruiyot, a Principal State Counsel who has conduct of the matter on behalf of the Defendants/Applicants.
 10. It is her claim that the said Further Amendment is crucial and essential to the fair determination of the dispute between the parties. That upon obtaining various documents and full information from their client, they discovered that there is need to amend the defence to include the additional information to enable them bring out all the facts in issue for determination. He annexed the Draft Further Amended Defence and marked as “WJC1”.
 11. She contends that the plaintiff and the other defendants will not suffer any prejudice if the said Amended Defence is admitted since the case is yet to proceed to full hearing.
 12. She thus urged the court to allow the application in the interest of justice and fair trial and grant leave to the Applicants to file their Further Amended Defence.
 13. Both applications were opposed. The Plaintiff/Respondent filed a Grounds of Opposition dated 4th March, 2025, in response to the averments raised by the applicants in the applications dated 11.02.2025 and 28.02.2025. They dismissed the applications as being fatally defective, frivolous, vexatious, bad in law, an abuse of the court process, misconceived, containing half-truths and blatant concealment of facts. He thus urged the court to dismiss both applications with costs.
 14. It was contended that the amendments are not necessary for the just determination of the dispute between the parties and by allowing the same, the respondent stands to be prejudiced and suffer injustice that cannot be compensated by way of costs.



15. It is his claim that the amendment is inconsistent with the original pleading and maintained that the said amendments seek to introduce new and/or inconsistent cause of action that is likely to occasion injustice to the respondent. They thus contend that if allowed, the said amendments will alter the nature of the defence and the suit entirely.
16. In conclusion, it was deponed that the applications were not filed timeously and the same seeks to frustrate the court of justice and thus urged the court to dismiss both applications with costs to the respondent.
17. The both Applications were disposed of by way of written submissions. However, on a perusal of the court record, I do note that only the 1st, 2nd and 4th Defendants/ Applicants filed their written submissions dated 06.08.2025 together with authorities, which I have read and considered.

Analysis and Determination:

18. I have carefully considered both applications, the various affidavits in support of the application, the grounds of opposition in response thereto together with the applicants' submissions and the authorities outlined therein in totality. This court is therefore of the considered view that the issues arising for determination are as follows: -
 - i. Whether the Applicants have met the standard for the grant of leave to amend pleadings;
 - ii. Whether leave can be granted to the Applicants to file a further list of documents and witnesses.
 - iii. Who shall bear the costs of the applications.
19. The general rule is that Amendments will be permitted where they aid in the just determination of the real issues in dispute without causing prejudice. This is provided under Order 8 Rule 5(1) of the Civil Procedure Rules provides that: -
 - i. "For the purpose of determining the real question in controversy between the parties, the court may at any stage of the proceedings allow any party to amend his pleadings on such terms as to costs or otherwise as may be just..."
20. Order 8 Rule 3(1) of the Civil Procedure Rules further provides that: -

"Subject to Order 1, rule 9 and 10, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just, allow any party to amend his pleadings."
21. The Court of Appeal in *Eastern Bakery –v-Castelino* [1958] EA 461 on the issue of amendment of pleadings held as follows: -

"Amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs."
22. This position has been reiterated in a number of case including in *Institute for Social Accountability & Another v Parliament of Kenya & 3 Others* [2014] eKLR where it was held that:-

"A court of law should not shirk from allowing an amendment that is necessary to bring out the real issues in controversy between the parties, unless it would cause prejudice or injustice to the other party."



23. In view of the foregoing, it is common ground that a court is duty bound to allow an application for amendment at any stage of the proceedings, provided the proposed amendments are aimed at determining the real questions in controversy and would not cause prejudice or injustice to the other party that cannot be compensated by an award of costs.
24. The Court of Appeal in the case of *St Patrick's Hill School Ltd v Bank of Africa Kenya Ltd* [2018] eKLR set out the principles governing the amendment of pleadings as follows: -
- a. The power of the court to allow amendments is intended to determine the true substantive merits of the case.
 - b. The amendments should be timeously applied for.
 - c. Power to amend can be exercised by the court at any stage of the proceedings.
 - d. That as a general rule however late the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side.
 - e. 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 rely on the Limitations Act subject however to powers of the court to still allow and amendment notwithstanding the expiry of current period of limitation....”
25. This court is further guided by the decision in the case of *Central Bank of Kenya vs Trust Bank Ltd & others* (2000) eKLR where it was held that: -
- “That a party would be allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no inordinate delay; that no new or inconsistent cause of action is introduced; that no vested interest or accrued – legal rights is affected and that the amendment can be allowed without injustice to the other side.”
26. Applying the above principles, in my view, the applicants have satisfactorily given a reasonable and justifiable explanation for the delay occasioned in filing the application in their supporting affidavit. They attributed it to obtaining relevant and additional documents from the relevant departments and obtaining certified copies thereof. The said explanation has not been challenged by the respondent neither is there any evidence to the contrary.
27. As held in the case of *St Patrick's Hill School Ltd v Bank of Africa Kenya Ltd* (supra), however late in the day the application has been made, the same can still be allowed where the court is satisfied that the same was made in good faith and that the other party can be compensated by an award of costs.
28. In determining whether the proposed amendments in the Further Amended Defence and the List of documents and witnesses and whether a new cause of action has been introduced that would prejudice and occasion injustice to the respondent, I have carefully and critically looked at the annexed draft Further Amended Defence and the List of Documents and it is my considered opinion that the proposed amendments arise from the same set of facts and which touch on the ownership, acquisition and alienation/allocation of the suit land Eldoret Municipality/ BLOCK 10/173. The proposed amendments neither introduce a new cause of action as alleged nor does the same prejudice or cause injustice to the respondent, particularly when the respondent may be compensated by an award of costs.



29. This court is therefore satisfied that the said proposed amendments are necessary for the determination of the real issues in dispute in this Case. As held hereinabove, the proposed amendments do not introduce a new cause of action or change the character of the case but are necessary to provide clarity of the substantive issues that go to the root of the dispute between the parties herein and will subsequently enable the Court to conclusively determine all issues between the parties to the suit.
30. In view of the foregoing, it is the finding of this court that the 1st, 2nd and 4th Defendants/Applicants have sufficiently proved their applications for leave for amendment to the required standard to warrant the grant of the orders sought.

Whether leave can be granted to the Applicants to file further list of documents and witnesses;

31. The second issue is whether this court can grant leave to the Applicants to file a Further List of Documents and witnesses. It is their contention that the said additional documents include various correspondences and official records from the Ministry of Lands and Physical Planning, the Lands Office and other relevant entities concerning the subject land. They further averred that the said documents are essential to the fair determination of the suit.
32. I have looked at the annexed List of Documents and taken into consideration the explanation tendered by the applicants on the delay occasioned in obtaining the same from the client and relevant entities.
33. From a cursory look at the annexed Further List of Documents, it is evident that some of the documents and correspondences listed therein date back to the year 1993. This court therefore acknowledges that obtaining and retrieving such documents from the different departments and entities would naturally require considerable time.
34. In view of the foregoing, it is the finding of this court that the explanation tendered by the applicants is sufficient and reasonable in the circumstances and consequently, there is need to grant them leave to file their Further List of Documents and witnesses in the interest of justice.
35. In addition, this court takes note that this case is yet to be set down for hearing and the plaintiff will therefore have an equal opportunity to critically evaluate the said documents and file any additional documents in response/ rebuttal thereto if they so wish.

Who shall bear the costs of the Applications;

36. The general rule is that costs follow the event unless the court directs otherwise. However, given the nature of the applications herein, I find it suitable/appropriate to award the plaintiff/respondent the costs of the applications.

Conclusion:

37. In view of the foregoing, I find that the Notice of Motion Applications dated 11th February, 2025 and 28th February, 2025 are both merited and are hereby allowed on the following terms:-
 - I. Leave be and is hereby granted to the 1st, 2nd and 4th Defendants/Applicants to file and serve a Further List of Documents and Witnesses within 5 days from the date of this ruling.
 - II. Leave be and is hereby granted to the 1st, 2nd and 4th Defendants to file and serve a Further Amended Defence within 5 days from the date of this ruling.
 - III. A corresponding Leave be and is hereby issued to the Plaintiff/ Respondent to file a response to the Further Amended Defence within 5 days of service.



IV. The 1st, 2nd and 4th Defendants/Applicants shall bear the costs of the Applications.

38. It is so ordered.

DATED, SIGNED and DELIVERED in ELDORET this 9TH day of OCTOBER, 2025.

HON. C. K. YANO

ELC, JUDGE

Ruling delivered virtually in the presence of: -

Ms. Chumo holding brief for Mr. Kirwa for the Plaintiff.

Ms. Aduke for 3rd Defendant.

Ms. Jerubet holding brief for Ms. Cheruiyot for 1st, 2nd & 4th Defendants.

Court Assistant – Laban

