



**Salim v Kithome & 3 others (Environment and Land Case  
311 of 2014) [2025] KEELC 6781 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6781 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CASE 311 OF 2014  
SM KIBUNJA, J  
OCTOBER 8, 2025**

**BETWEEN**

**MOHAMED ALI SALIM ..... PLAINTIFF**

**AND**

**STANLEY MUNUVE KITHOME ..... 1<sup>ST</sup> DEFENDANT**

**ADMINISTRATOR OF THE ESTATE OF KIBIBI MAJALIWA AND OMAR  
JUMA SAID ..... 2<sup>ND</sup> DEFENDANT**

**SAMMY MWANGI KAMAU ..... 3<sup>RD</sup> DEFENDANT**

**JERRY EDWIN OMARE ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. In his application dated 16th May 2025, the 1st defendant seeks to re-amend the amended statement of defence and counterclaim. The application is premised on the six ground on its face marked (a) to (h) and supported by the affidavit of Stanley Munuve Kithome, the 1st defendant, sworn on 16<sup>th</sup> May 2025. It is the 1<sup>st</sup> defendant's case inter alia that he bought the suit property from Kibibi Binti Majaliwa, deceased; that the 2<sup>nd</sup> Defendant have fraudulently processed the title for the portion of the land he had bought and purported to sell it to the 3<sup>rd</sup> defendant and or the plaintiff; that the amendment sought is to add the Registrar of Titles, Mombasa as a defendant, include other prayers against 2<sup>nd</sup> to 4<sup>th</sup> defendants, and remove the administrators of the Estate of Kibibi Bini Majaliwa as a party; that the amendments are crucial to the determination of the real issues in controversy between the parties, and no prejudice will be suffered by the respondents.
2. The application is opposed by the plaintiff through the replying affidavit that he swore on 27th June 2025, inter alia deposing that the application is incurably defective, mischievous and an abuse of the court process and is aimed at derailing the progress of the suit; that the matter was filed over ten years ago and that the amendments seeks to introduce new particulars of fraud and an additional prayer



which is tantamount to introducing new causes of action; that the Registrar of Titles need not be joined as a defendant, as can be summoned at the discretion of the court as a witness; that the amendments would necessitate amendment of his pleadings, thereby occasioning more delay; that the 1st defendant had ample time to amend his Defence and counterclaim after being granted leave on 14th November 2017 pursuant to his application dated 27th February 2017; that the 1<sup>st</sup> defendant had previously filed a similar application on 24th March 2024 but withdrew it which show bad faith and an intention to frustrate the fair and expeditious determination of the matter; that in paragraph 17 of the draft defence and counterclaim, the 1st defendant has expressed his intention to move the court for further joinder of parties which further illuminates his intention to drag the matter.

3. The 3rd defendant also opposed the application through his replying affidavit sworn on 17th July 2025, among others deposing that the application is a delaying tactic, and yet another attempt after the 2nd defendant's application dated 16th July 2024 failed; that joinder of the Registrar of Titles does not add any substance to the suit; that the amendment application will cause confusion rather than clarity; that the application is frivolous, vexatious and an abuse of the court process.
4. The court issued directions on 23<sup>rd</sup> June 2025 for filing and exchanging submissions. The learned counsel for the plaintiff and the 1<sup>st</sup> defendant filed their submissions dated 27<sup>th</sup> June 2025 and 9<sup>th</sup> July 2025 respectively, which the court has considered. The 3<sup>rd</sup> defendant's counsel indicated he was not filing any submissions and was associating himself with the plaintiff's submissions.
5. The following are the issues for determinations by the court:
  - a. Whether the application has met the threshold for an leave to amend to be granted as sought.
  - b. Who bears the costs of this application?
6. The court has considered the grounds on the application, the affidavit evidence, submissions by counsel, and come up with the following determinations:
  - a. Joinder of a defendant is provided by Order 1 Rule 3 of the Civil Procedure Rules, while Rule 10 thereof provides for substitution and addition of parties. It is crystal clear that joinder of a party is possible at any stage of a suit, so long as it is necessary for the determination of the real dispute before the court or to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.
  - b. The plaintiff is opposed to the joinder of the Registrar of Titles, deposing that the court can summon the officer as witness, and that the dispute before the court is solely between the parties already before the court. The 1<sup>st</sup> defendant has contended that cancellation of the title issued to the plaintiff, and issuance of title to the him can only be done by the Registrar of the Titles. The Court of Appeal outlined the relevant guiding principles on amendment of pleadings in the case of Central Kenya Ltd versus Trust Bank Ltd & 5 others [2000] eKLR as follows:

“ The policy of the law is that amendments to pleadings are to be freely allowed unless by allowing them the opposite side would be prejudiced or suffer injustice which cannot properly be compensated for in costs.”

Further, in the case of Pravin Bowry versus John Ward & Another [2015] KECA 215 (KLR), the court held as follows:

“ Order I rule 10 of the Civil Procedure Rules provides for substitution and addition of parties to suits. Under rule 2 thereof the court may at any stage of proceedings



either upon or without the application of either party and on such terms that 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 to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit to be added. Rule 4 provides for the manner in which the plaint is to be amended where a defendant has been added to the suit.”

The Court of Appeal further cited the Ugandan case of *Deported Asians Property Custodian Board versus Jaffer Brothers Limited* (1999) I EA 55 (SCU) where it was held that:

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter...

For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.”

While the Registrar of Titles does not need to be joined in a suit merely for purposes of executing the orders that may be issued, there is need to bring that office on board where there are specific allegations raised in the pleadings against it. Looking at the particulars of the draft Re-amended statement of defence and counterclaim attached to the 1<sup>st</sup> defendant’s affidavit, it evidently contains allegations of fraud among others, against the intended 4<sup>th</sup> defendant, Registrar of Titles.

- c. It is therefore only fair that the Registrar of Titles to be joined in the suit to accord the office an opportunity to be heard. Furthermore, the 1<sup>st</sup> defendant has sought to be allowed to remove 2<sup>nd</sup> defendant as a party, and as it is not a juristic person. I see no prejudice on any party if the 2<sup>nd</sup> defendant is removed as a party. It is only logical that the 1<sup>st</sup> defendant be allowed to amend the particulars of fraud, as he has been allowed to join the Registrar of Titles as the 4<sup>th</sup> defendant.
- d. Section 100 of the *Civil Procedure Act* chapter 21 of Laws of Kenya gives this court the general power to allow amendments “for the purpose of determining the real question or issue raised by or depending on the proceeding”, while Order 8 Rule 3 of the Civil Procedure Rules allows this court to grant leave to amend pleadings. The arguments by counsel for the plaintiff that allowing the application will introduce new fresh cause of action, and expand the duration of litigation, holds no water in view of the above provisions of the law, and superior courts



decisions to the effect that amendments should be freely allowed, unless where it is shown the prejudice likely to be suffered by the other party cannot be compensated through an award of damages. I find the 1<sup>st</sup> defendant has a right to be allowed to mount an appropriate defence. The plaintiff and the party being added will have an opportunity to file their rejoinders once the re-amended defence and counterclaim is formally filed and served. Obviously, this application has resulted to some delay and costs to the other parties.

- e. That considering that this suit was filed in 2014, it is hoped that the 1<sup>st</sup> defendant will ensure he raises all the issues of facts that concerns this suit in the re-amended defence and counterclaim that he is going to file to avoid any further delay through similar applications in the future.
  - f. Under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, costs follow the event unless where there is good reason to depart from the rule. Though the 1<sup>st</sup> defendant has succeeded in his amendment application, I find he does not deserve costs as he had previously made another application for amendment, and indeed filed the amended defence and counterclaim, and there are no reasons tendered as to why he did not incorporate all amendments then.
7. From the foregoing conclusions on the notice of motion dated 16<sup>th</sup> May 2025, the court finds and orders as follows:
- a. That the application has merit and is granted in terms of prayer (1) thereof.
  - b. That the 1<sup>st</sup> defendant do file and serve his re-amended statement of defence and counterclaim in fourteen (14) days.
  - c. That no order as to costs is granted.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 8TH DAY OF OCTOBER 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In The Presence Of:

Plaintiff : M/s Mulago

Defendants : Mr Tindika For 1<sup>st</sup> Defendant

Mr Asige for 3<sup>rd</sup> Defendant

Kalekye-court Assistant.

S. M. Kibunja, J.

Elc Mombasa.

