



REPUBLIC OF KENYA



**Kemnitz v Muthoni alias Elizabeth Karimba (Environment and Land Case
E023 of 2023) [2025] KEELC 7360 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7360 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE E023 OF 2023
LC KOMINGOI, J
OCTOBER 28, 2025**

BETWEEN

CHRISTOPHER JAMES KEMNITZ PLAINTIFF

AND

ELIZABETH MUTHONI ALIAS ELIZABETH KARIMBA DEFENDANT

RULING

1. This ruling is in respect of the Notice of Motion dated 23rd February 2025. The same is brought under;
(Order 8 Rule 3 and Rule 5 of the Civil Procedure Rules, 2010, Sections 1A and 1B and 18 of the Civil Procedure Act and Section 100, Article 159 (2) of the Constitution and all other enabling provisions of law)
2. It seeks orders;
 - a. That leave be granted to the Plaintiff to amend his plaint dated 20th March 2023.
 - b. That the annexed amended Plaint be deemed as duly filed upon payment of the requisite court fees.
 - c. That the Defendant be granted leave to amend her defence.
 - d. That costs be in the cause.
3. The grounds are on the face of the Application and are set out in paragraphs 1 to 4.
4. The Application is supported by the Affidavit of Christopher James Kemnitz, the Plaintiff/Applicant herein, sworn on the 23rd February 2025.
5. The Application is opposed.



There is a Replying Affidavit sworn by Elizabeth Muthoni, the Defendant/Respondent on the 3rd March 2025. There are also Grounds of Opposition dated 26th February 2025.

6. The Notice of Motion was canvassed by way of written submissions.
7. I have considered the Notice of Motion, the Affidavit in support, the response thereto, the rival submissions and the authorities cited. The issue for determination is whether this application is merited.
8. It has been held that, amendments sought before trial should be granted if such amendments are necessary to put the facts in dispute between the parties before the court for adjudication of the matter and further, that there would be no injustice occasioned to the adverse party. Costs will ordinarily be adequate compensation. See *Macharia Vs. Guardian Bank Ltd & Another* HCC 938 of 2000.
9. Similarly in *Elijah Kipngeno Arap Bill Vs. KCB Limited* (2013) eKLR the Court of Appeal in dealing with issues of amendment, held as follows;

“The law on amendment of pleadings in terms of Section 100 of the *Civil Procedure Act* and Order VI Rule 3 of the repealed Civil Procedure Rule under which the application was brought was summarized by this court, quoting from Bullen and Leake & Jacob’s Precedent’s of pleadings – 12th Edition, in the case of *Joseph Ochieng & 2 others Vs. First National Bank of Chicago* Civil Appeal No. 149 of 1991 as follows:

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case, amendments should be timeously applied for, power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late the amendments is sought, to be made should be allowed if made in good faith provided costs can compensate the other side, that the proposed amendments must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence, it can be allowed unless it would change the action into one of a substantially different character which could conveniently be made the subject of a fresh action; that 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 Limitation Acts.”

10. Going by the above authorities, I find that no prejudice will be occasioned by to the Defendant if the plaintiff is allowed to amend his plaint.
11. I find merit in this application and the same is allowed in the following terms;
 - a. The leave is hereby granted to the plaintiff to amend his plaint.
 - b. That the Annexed Amended Plaint be deemed to be duly filed upon payment of the requisite fees.
 - c. That the Defendant do file Amended Defence if need be within twenty one (21) days upon service.
 - d. That costs of this Application be borne by the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28TH DAY OF OCTOBER 2025.



L.KOMINGOI

JUDGE.

In The Presence Of:

Ms. Wairimu for the Plaintiff.

Mr. F. Manzi for Mr. Kahuthu for Defendant.

Court Assistant – Peter.

