

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC NO. E084 OF 2022

TOBAN SALIM NAAMAN.....
PLAINTIFF

VERSUS

JAMES KARAGANIA M'IRURA &19 OTHERS.....
DEFENDANTS

RULING

1. The plaintiff, Toban Salim Naaman, has filed a notice of motion dated May 22, 2025, seeking permission to amend their plaint by attaching a proposed amended plaint. This amendment aims to enjoin and include new parties, specifically a surveyor, the Land Registrar, the Director of Surveys, the Attorney General, and Edward M.J. Kiguru t/a Edward Kiguru Land Surveyors; introduce new claims and causes of action related to alleged fake deed plans, titles, and issues concerning subdivision and trespass.

2. The plaintiff argues that these amendments are necessary to clarify the actual issue in controversy, will not prejudice any party, and that the application is only intended to consolidate all issues into one suit.
3. The application is opposed, as indicated by the responses from the respondents.
4. The court instructed the parties to submit their submissions in writing. I received submissions from Mr. Oddiaga, the learned counsel for the plaintiffs; Ms. Okumu, for the 3rd and 4th defendants; Mr. Odongo, for the 7th, 8th, 11th, 12th, 14th, and 15th defendants; and Mr. Mukiri, for the 18th defendant. I appreciate their contributions, as they greatly aided in addressing the issues raised in this application.
5. From the pleadings and submissions from the parties, the issue I identify for the determination of this application is whether the court should permit an amendment to the plaint at this time and who should bear the associated costs. The court has carefully considered all aspects of the amendment, taking into account the concerns raised by the parties.
6. The plaintiff contends that the defendants have not testified in this case, and only the plaintiff has testified, with the option to continue if necessary. He asserts that the suit raises significant

issues of land ownership, unlawful dispossession, and transfer of ownership. He stresses the importance of allowing the plaintiff to bring all parties he believes are involved in the illegalities to help the court resolve the dispute.

7. Plaintiff contends that the amendment will allow the court to identify the actual issue in dispute and is not prejudicial to any party. The application is intended to consolidate all issues into a single suit to avoid the risk of the plaintiff filing multiple lawsuits, which could lead to duplication.

8. The respondents, on the other hand, believe that the amendment made after the closure of the plaintiff's case is intended to address the gaps that emerged from the plaintiff's case, considering that the plaintiff already closed his case.

9. That the amendment seeks to bring new parties to the lawsuit that will alter the entire foundation of the suit property, and that the same should be disallowed.

10. The **Civil Procedure Act** and **Rules** thereto allow this court to permit amendments at any stage of the suit. Such amendments are allowed to enable the court to resolve the matter before it with finality.

11. Order 8 Rule 3 of the **Civil Procedure** provides for amendments of proceedings and provides as follows:

“(1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.”

12. Further **Order 8 Rule 5** grants the court broad authority to amend and states as follows:

“5(1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”

13. The authority to allow amendments to pleadings is limited and must be exercised carefully, considering established principles and the specific circumstances of each case. Leading authorities cited by parties in this area include, for example, **Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited [2013] eKLR; K.K. Lodgit Limited v Geminia Insurance Company Ltd & Another [2021] eKLR; J.C. Patel v D. Joshi [1952] EACA 12; Central Bank of Kenya v Trust Bank Limited (2002) 2 EA 365; Muhoro v Nairobi**

City County (Environment & Land Case E141 of 2021) KEELC 5380 (KLR) (18 July 2024) (Ruling); Tripat Singh Mangat (Suing on his behalf and on behalf of Mangat I, B. Patel (MIBP) Limited) v Manjeet Singh Bhachu & 3 others [2021] KEHC 12934 (KLR); Lelakwen Self Help Group v Simel (as administrator of the estate of the late Simel Ole Naimodu) & 8 others (Environment & Land Case 35 of 2020) KEELC 1235 (KLR) (7 March 2024) (Ruling); Kassam v Bank of Baroda (Kenya) Limited (2002) 1 KLR 294; and the case of Institute for Social Accountability and Another v Parliament of Kenya and 3 Others [2014] eKLR. The latter case highlights that the power of amendment significantly enhances the court's ability to determine the substantive merits of a case effectively. Generally, a court will allow amendments necessary to address the true issues in dispute or to prevent multiple lawsuits, as long as there has been no undue delay, no new or contradictory cause of action is introduced, and no vested interest or legal right is harmed. The court notes that "*the amendment can be allowed without an injustice to the other side.*" Specifically, the court must consider the following:

a) Purpose of Amendment. The court must evaluate the purpose of an amendment to ensure that a party is not simply trying to fix defects or errors or to escape from a position taken with full awareness of the facts. In this case, the plaintiff had already closed his case and was cross-examined. Immediately afterward, a new amendment is being requested, introducing new parties. Specifically, and in my view, the plaintiff is attempting to correct defects and errors that appeared during cross-examination.

b) Undue and Unexplained Delay: Although amendments can be made at any time, undue delay is a significant factor. Considering the longevity of this matter since filing in 2022, the current application was filed three (3) years after the lawsuit began and notably after the plaintiff's witness had been cross-examined. This delay is substantial and unexplained. The plaintiff has offered no explanation or justification for this late request. The delay is excessive and cannot be countenanced at this point.

c) Introducing New Causes of Action: Amendments should not introduce new claims that should have been included in the initial pleadings. In this case, the omission of the proposed defendants cannot be said to be non-accidental, as the causes of action and the need for joinder were known or should have been known to the plaintiff. Moreover, this application is a response to evidence presented by the

defendants, constituting an attempt to re-plead the case. Order 3 Rule 4 of the Civil Procedure Rules requires the plaintiff to include all claims related to a cause of action, and failure to plead a complete claim forfeits the omitted claims. This supports the defendant's claim that the plaintiff seeks to introduce claims that should have been part of the original suit. As a result, such a delay, especially after cross-examination, prejudices the defendants and constitutes an abuse of the court process.

d) Prejudice to the defendants: Allowing the amendment would force the defendants to revise and review their entire defense, which is a substantial adjustment. It would significantly alter the scope of the defense and likely cause further delays in the hearing and resolution of the case. Such prejudice, in my view, cannot be adequately remedied by costs alone.

e) Lack of Merits and Abuse of Process: The application lacks merit and does not present a reasonable cause of action for the delayed amendment. The plaintiff is attempting to introduce a new element to a case that has progressed substantially, which amounts to an abuse of the court's process.

14. The plaintiff has not demonstrated sufficient cause under **Order 8, Rules 3 and 5 of the Civil Procedure Rules** to

justify the proposed amendment or joinder. Conversely, the application appears to be a reactionary and strategic effort to rework the plaintiff's case after they have finished their evidence, rather than to address any genuine defect or clarify an issue in dispute.

15. Consequently, the application dated May 22, 2025, lacks merit and is hereby dismissed with costs.

Dated, signed, and delivered virtually at Malindi on this 23rd day of October 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Oddiaga for the Plaintiff

Ms. Otieno for the 3rd and 4th Defendants

Ms. Kokwon for the 17th Defendant

Happy: Court Assistant

In the absence of:

Mr Odongo for the 7th, 8th, 11th, 12th, 14th, and 15th defendants

Mr. Mukiri for the 18th Defendants

