



**Equity Bank (Kenya) Limited & another v Kinjunje Gardens Limited & 8 others
(Environment and Land Case 941 of 2016 & Environment and Land Case Civil Suit
947 of 2016 (Consolidated)) [2025] KEELC 7859 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7859 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 941 OF 2016 & ENVIRONMENT
AND LAND CASE CIVIL SUIT 947 OF 2016 (CONSOLIDATED)**

AA OMOLLO, J

NOVEMBER 13, 2025

BETWEEN

EQUITY BANK (KENYA) LIMITED PLAINTIFF

AND

KINJUNJE GARDENS LIMITED 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

PATRICK KANGETHE NJUGUNA 3RD DEFENDANT

MARGARET WAMBUI KANGETHE 4TH DEFENDANT

AS CONSOLIDATED WITH

ENVIRONMENT AND LAND CASE CIVIL SUIT 947 OF 2016

BETWEEN

**NCBA BANK KENYA PLC (FORMERLY COMMERCIAL BANK OF AFRICA
LIMITED) PLAINTIFF**

AND

WARDPA HOLDINGS LIMITED 1ST DEFENDANT

CO-OPERATIVE BANK OF KENYA LIMITED 2ND DEFENDANT

LEAKEYS AUCTIONEERS 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

PATRICK KANGETHE NJUGUNA 5TH DEFENDANT



GLADYS NJERI KANGETHER 6TH DEFENDANT
GEORGE JAMES KIRERU 7TH DEFENDANT
EDWARD NJUGUNA KANGETHE 8TH DEFENDANT

RULING

1. The 1st Defendant/Applicant filed a Notice of Motion dated 28th March 2025 seeking for the following orders;
 - a. Spent
 - b. That leave be and is hereby granted to the 1st Defendant herein to amend its statement of defence in terms of the draft amended statement of defence annexed hereto.
 - c. That the costs of this application be provided for.
2. The application is based on supporting and supplementary affidavits, both sworn by Patrick Kang'ethe Njuguna on 28th March 2025 and 27th June 2025, respectively. He states, among other things, that the current suit was scheduled for hearing on 3rd April 2025 and, upon advice from their advocates that parties are bound by their pleadings and that any omission may have serious implications during trial, there is need to amend their defence.
3. That their filed statement of defence currently on record does not address the issue of the Court's lack of jurisdiction arising from the Plaintiff's amended Plaint, which substantially altered the nature of the claim from land-related to purely commercial issues. Additionally, the Plaintiff in ELC No. 941 of 2016 amended its Plaint after the Court had already delivered its ruling, significantly altering its original cause of action by replacing the initial land-related claims with new, purely commercial ones.
4. The 1st Defendant/Applicant stated that the proposed amended statement of defence annexed seeks to incorporate this material issue and align the defence with the Plaintiff's amended pleadings. The deponent further notes that the Plaintiff's Grounds of Opposition are diversionary and fail to address the fact that the amendment was filed after the Court's ruling of 3rd March 2022, in which the court confirmed that the dominant cause of action was the validity of the various titles to the suit property a matter within the exclusive jurisdiction of the ELC.
5. That this amendment, filed on 26th May 2022, came more than two years after the Plaintiff had been granted leave on 21st January 2020, and after the court's ruling of 3rd March 2022, which firmly established that the dominant cause of action concerned the validity of the various titles to the suit property, a matter within the exclusive jurisdiction of the ELC.
6. The deponent argues that if the 1st Defendant's application to amend its defence is deemed unmerited while the Plaintiff's amended Plaint is allowed to stand, it would fundamentally change the nature of the claim and effectively oust the jurisdiction of this Court.
7. He further contends that neither the Plaintiff nor the other defendants would suffer any prejudice if the proposed amendment is allowed, as the matter is yet to be heard on its merits. That any potential inconvenience can be cured by allowing parties to file supplementary pleadings.
8. The Plaintiff in ELC No. 941 of 2016 filed grounds of opposition dated 29th May 2025 while Plaintiff in ELC No. 947 of 2016 filed grounds of opposition dated 11th June 2025 stating that the application



for amendment was filed too late and appears intended to delay the proceedings. That the proposed amendment is based on a mistaken belief that the court lacks jurisdiction, an issue already conclusively determined by Justice S. Okongo in a ruling on 3rd March 2022, which dismissed a similar jurisdictional challenge. Since that ruling has not been appealed, it remains valid making the 1st Defendants' application without merit.

Submissions

9. The 1st Defendant filed submissions dated 28th May 2025 in support of their application stating that it seeks leave to amend its defence, arguing that the amendment is necessary to address the issues arising from the plaintiff's amended plaint dated 26th May 2022. That the plaintiff's amendment introduced a new, liquidated claim and replaced all the original prayers, thereby raising questions about the statutory jurisdiction of this Court to adjudicate the matter.
10. The 1st Defendant submits that in light of these significant changes, an amendment of its defence is justified and should be allowed as a matter of right and in the interest of justice. The defendant further relies on Order 8 Rule 5 of the Civil Procedure Rules, which empowers the court to allow amendments at any stage to facilitate determination of the real issues in controversy.
11. In support of the application, the 1st Defendant cites *Inter Tropical Timber Trading Ltd v Kenya Power & Lighting Company Ltd* [2021] eKLR, where the court adopted the reasoning in *Andrew Wabuyele Biketi v Chinese Centre for the Promotion of Investment Development in Trade in Kenya Ltd & 2 others*, holding that amendments should be freely allowed at any stage before judgment provided they are not made in bad faith and do not prejudice the other party beyond compensation by costs.
12. The 1st Defendant maintains that the present application is made in good faith, arises solely due to the plaintiff's own amendment, and will not occasion any prejudice or injustice to the opposing parties.
13. Equity bank filed submissions dated 4th July 2025 stating that the application for amendment has been filed belatedly and appears to be a deliberate attempt to delay the proceedings. That also the proposed amendment is founded on a mistaken belief that this Court lacks jurisdiction, an issue already conclusively determined by Justice S. Okongo in a ruling delivered on 3rd March 2022. In that decision, the Court dismissed *Wardpa Holdings'* application dated 22nd January 2021, which had sought to challenge the Court's jurisdiction and transfer the consolidated suits to the Commercial Division of the High Court. The Court held that the dominant issue in the consolidated suits concerned the validity of the multiple titles to the suit property, a matter squarely within the jurisdiction of the Environment and Land Court (ELC), as provided under Article 162(2)(b) of *the Constitution* and Section 13 of the *Environment and Land Court Act*.
14. They submitted that since no appeal has been preferred against that ruling, it remains binding. That this position aligns with the principle of finality and consistency in judicial decisions as emphasized in *Uhuru Highway Development Ltd v Central Bank of Kenya* [1999] eKLR and *Flora N. Wasike v Destimo Wamboko* [1988] eKLR, where courts held that once an issue is conclusively determined, it cannot be reopened in the same proceedings.

Analysis

15. The issue for determination in this suit is whether this court should grant the Applicants with leave to amend their defence. The Applicants have argued that following the Plaintiff/Respondents' amendment of the Plaint, there is need for them to amend their Defence to respond to the additional issues raised. That their filed statement of defence currently on record does not address the issue of



- the Court's lack of jurisdiction arising from the amendment of Plaintiff, which substantially altered the nature of the claim from land related to purely commercial issues.
16. On the other hand, the Plaintiff/Respondent argues that the amendment sought was filed too late and made in bad faith, intending to delay these proceedings.
 17. Order 8 Rule 5(1) of the Civil Procedure Rules 2010 provides that the Court may, at any stage of the proceedings, allow a party to amend its pleadings on such terms as may be just, and as may be necessary for the purpose of determining the real question in controversy.
 18. The general principle, as referenced by the Applicant from *Inter Tropical Timber Trading Ltd v Kenya Power & Lighting Company Ltd* [2021] Eklr and *Eastern Bakery v Castelino* [1958] EA 461, is that amendments should be freely allowed if made in good faith and do not cause prejudice that cannot be compensated by costs.
 19. The record shows that the Plaintiff amended its Plaintiff on 26th May 2022, while the present application was filed on 28th March 2025, nearly three years later. The Applicant has not sufficiently explained the delay, save for stating that it only recently appreciated the implications of the amended Plaintiff.
 20. While delay alone is not a bar to amendment, the court must consider whether the delay is likely to prejudice the opposing party or disrupt the orderly progress of the suit. In this case the hearing of the suit had not commenced although the timing of this application impacted on the hearing by stalling the proceedings of 3rd April, 2025.
 21. I have looked at the amended plaintiff dated 26th May, 2022. On the face of it all the previous prayers seeking orders of permanent injunction against the Defendants as well as declaratory orders to nullifying the charge in favour of 2nd defendant have been deleted/omitted.
 22. Instead, the plaintiff now seeks judgment for a liquidated sum and general damages for alleged fraud and or collusion between the 1st, 3rd and 4th Defendants. Thus, the amendment introduced a new set of claims.
 23. On the basis of the alteration of the claim by the Plaintiff, I am not persuaded that the Defendant/Applicant should be denied leave to amend purely on the ground of the outcome of the previous ruling. The Applicant is entitled to respond to the new claim. Therefore, the application dated 28th March, 2025, is granted in terms of prayer 1. The amended defence is to be filed within seven (7) days hereof.
 24. The cost of the application to the Plaintiff on account of the application having been brought after undue delay.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF NOVEMBER, 2025

A. OMOLLO

JUDGE

