



Kinyua v Mwangi & 3 others; Real Court 99 (Intended Interested Party) (Environment and Land Case E118 of 2023) [2025] KEELC 7724 (KLR) (10 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7724 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E118 OF 2023
CA OCHIENG, J
NOVEMBER 10, 2025**

BETWEEN

STEPHEN MACHARIA KINYUA PLAINTIFF

AND

MICHAEL WACHIRA MWANGI 1ST DEFENDANT

**EUNICE THIMBUI (SUED AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF JOHN NGAMATE RUGA) 2ND DEFENDANT**

NAIROBI LAND REGISTRAR 3RD DEFENDANT

NAIROBI COUNTY SURVEYOR 4TH DEFENDANT

AND

REAL COURT 99 INTENDED INTERESTED PARTY

RULING

1. What is before the Court for determination is the Plaintiff's Notice of Motion application dated the 16th October 2024 where he seeks the following Orders:
 - a. That the Honourable court be pleased to grant leave to the Plaintiff for amendment of his amended plaint dated 13th day of October 2023.
 - b. That the costs be in the cause.
2. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He avers that a new map has recently been developed by the government, touching on the suit property, and that it is shrouded with illegalities since that there was no public participation. Further, that what is contained therein is adverse to the actual position on the ground together with the original map, thus the map will have adverse effects on his buildings and those of members of the Interested Party. He



points out that it captures LR No. 6845 1902, which was subject of this Court's Decree in ELC Case No. 571 of 2015 where the Court directed that no changes should be effected.

3. He avers that the amendment is proper as it will assist all parties have a finality of the dispute, which is centered on the question on which of the two (2) maps should be used for demarcation, construction and issuance of title deeds. Further, that prayers in the plaint shall include prayers for cancellation of the new map and its subsequent titles and adoption of old map as the true and legal map. He claims that being that the Defendants are yet to file their defenses, allowing the instant application shall not prejudice any party and the amendments do not change the substance of the suit.
4. The application is opposed by the 1st and 2nd Defendants vide the 1st Defendant's replying affidavit. He contends that the application is an attempt to derail the expeditious conclusion of the suit and points out that the Plaintiff's allegation in his plaint is that they had encroached on his property, of which this Court has determined that the matter is a boundary dispute and a Government Surveyor had vindicated them from blame. Further, that the Plaintiff is purporting to speak on behalf of the Intended Interested Party without authority to Act. He insists that they have no stake in the matter and any cause of action they may have, should be ventilated separately.
5. He also points out that the Court had initially issued temporary orders to stop them from undertaking any construction but pursuant to the aforementioned report filed by the Government Surveyor, this Court discharged the said orders, effectively allowing them to complete their construction.
6. The 3rd Defendant did not file a response.
7. The application was canvassed by way of written submissions.

Submissions

8. The Plaintiff submits that the outcome of this suit shall greatly affect the intended Interested party who has vested interest since all their plots are located in LR No. 6845 1093, thus the question on which map is valid will shed light on the best approach to take. He clarified that he is not representing the intended Interested party but only raised matters that the said party brought to his attention during the survey exercise. To buttress his averments, he relied on the following decision: Maria Rosita Cardozo vs Robert Kibagendi Otachi & Another (2013) eKLR.
9. On their part, the 1st and 2nd Defendants submit that pursuant to a report filed herein on 15th April 2024 by the Director of Survey, according to the official cadastral plan, the Plaintiff's Apartment Block has no rear access and it encroaches uniformly into their property by approximately 2.3 meters, while they have neither encroached upon nor obstructed the road thus the Plaintiff's allegations of encroachment are devoid of merit.
10. Further, that the Director of Survey's map unlike the map relied upon by the Plaintiff, reflects the authoritative position of boundary alignments by government surveyors. They also submit that the proposed Interested Party has not demonstrated any legal interest in any of the suit properties that are the subject of these proceedings. Further, that the boundary dispute had already been referred to the Land Registrar by this Court thus joining a party at this stage would create unnecessary complexity and delay as well as the overriding objective of judicial efficiency. They reiterate that mere allegations or speculative claims without supporting evidence in the form of title deeds, are insufficient to justify joinder. They contend that despite the suit having been pending for nearly two years, the Plaintiff is yet to produce his title, which undermines the credibility of his pleadings.
11. To support their averments, they relied on the following decisions: Sugut v Koech [2025] KEELC 400 (KLR); Rinda v China Civil Engineering Construction Cooperation Limited [2024] KEELC 3814



(KLR); Kairu v Mutunga [2023] 21723 (KLR Muteru v County Land Registrar, Laikipia; James & Another [2023] KEELC 21990 (KLR); Francis Karioki Muruatetu & another v Republic & 5 others [2016] eKLR, and Ochieng Owiti & others v Anthony Oluoch t a A. T Oluoch and Company 4 Advocates & 2 others [2020] KEELRC 352 (KLR).

Analysis and Determination

12. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the only issue for determination is whether the Plaintiff should be granted leave to amend his amended Plaintiff.
13. The Plaintiff seeks to amend his amended Plaintiff and include Real Court 99 as an Interested Party. He alleges that the survey report by the Director of Survey altered boundaries in contradiction to the Court endorsed map in ELC No. 571 of 2015, thereby necessitating the demolition of existing structures by the alleged affected persons.
14. The 1st and 2nd Defendants opposed the application contending that the amendments sought seek to further delay the matter as the dispute had already been referred to the Land Registrar and that a Court ordered survey report filed by a government surveyor indicated that they have not encroached on the Plaintiff's property.
15. The record indicates that on 15th July 2024 this Court referred the dispute to the Land Registrar to file a report in tandem with Section 18 and 19 of the *akn ke act 2012 3 Land Registration Act*. The matter was thereafter mentioned severally where the Land Registrar indicated that he could not generate a report because the Plaintiff did not avail his certificate of title. The issue of the report under Section 18 and 19 was left hanging then the instant application was filed.
16. The legal framework governing amendment of pleadings is contained in Section 100 of the *akn ke act 1924 3 Civil Procedure Act* and Order 8 Rule 3 (5) of the Civil Procedure Rules. Order 8 Rule 3 (1) and (2) of the Civil Procedure Rules provides that:
 - “(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.
 - (2) Where an application to the court for leave to make an amendment such as is mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such subrule if it thinks just so to do.”
17. While Order 8 Rule 5 of the Civil Procedure Rules provides as follows:
 - “(1) For purposes of determining the real question in controversy between the parties, or of correcting any defective 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.”



18. In the case of *Joseph Ochieng & 2 Others Trading as Aquiline Agencies v First National Bank of Chicago* [1995] eKLR the Court of Appeal set out the principles for granting amendment of pleadings and stated thus:

“.....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 more 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 Limitation Acts but subject however to powers of court to still allow such an amendment notwithstanding the expiry of current period of Limitation: that the court has powers even (in special circumstances) to allow an amendment adding or substituting a new cause of action if the same arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to seek the amendment.”

19. In *Tarmohamed v Mariakani Holdings Limited & another* [2022] KECA 122 (KLR), the Court of Appeal stated that:

“....rules that apply to amendment of pleadings will apply, namely that amendments should be liberally allowed, if they can be made without injustice to the other side, or where such injustice can be compensated by costs.”

20. On whether to join the Interested Party, in *Trusted Society of Human Rights Alliance v Mumo Matemu & 5 Others* [2014] eKLR, the Court defined an interested party as:

“...one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...”

21. In *Meme v. Republic* [2004] KLR cited by the Court of Appeal in *Pravin Bowry v John Ward and Another* [2015] eKLR, it outlined circumstances when joinder of parties would be permissible as follows:

“(i) Where the presence of the party will result in the complete settlement of all the questions involved in the proceedings;(ii) Where the joinder will provide protection for the rights of a party who would otherwise be adversely affected in law: and(iii) Where the joinder will prevent a likely course of proliferated litigation.”

22. In this instance, the Plaintiff has sought to amend the amended Plaintiff. From perusal of the proposed amendments on the draft annexed to the supporting affidavit, I note it introduces a new case or new ground that would change the action into one of a substantially different character, which could more conveniently be made the subject of a fresh action. Further, the Plaintiff has sought for cancellation of a map, revocation of other titles emanating from a purportedly new map, which did not form part of the initial cause of action and joinder of an Interested Party in these proceedings. On joinder, the Plaintiff never sought this prayer in the instant application but it emerged in the supporting affidavit. From a reading of the Plaintiff's affidavit, the necessity of the proposed Interested party is not properly explained.



23. Insofar as amendments can be allowed at any time in the proceedings, I opine that introduction of a new cause of action, which did not form part of the initial action will be prejudicial to the Defendants' herein, moreso, the 1st and 2nd Defendants who have even filed a defense including counterclaim. Further, the parties whose titles are supposed to be cancelled were not parties to this suit.
24. It is my considered view that a new suit would suffice to deal with the fresh issues raised in the amendment. I opine that if the Plaintiff had an issue with the report from the Director of Survey, which dealt with the boundary dispute herein, he should have appealed against the said decision as required by law.
25. In the foregoing, I find the instant Notice of Motion application unmerited and will proceed to dismiss it.
26. Costs will be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF NOVEMBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

court Assistant: Joan

