

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 537 OF 2007

MACHARIA MWANGI

MARGARET NYAMBURA NJAAGA

ROSE WANGARI KIMANI Suing on behalf of

KAMITI CORNER WELFARE GROUP

PLAINTIFFS

VERSUS

MURARANDIA COMPANY LTD 1ST

DEFENDANT

CHARLES KABUTU KIBAARA 2ND

DEFENDANT

CROSS COUNTY VENTURES LTD 3RD

DEFENDANT

VINCENT KAMAU MAINA 4TH

DEFENDANT

CATHERINE MUTHONI MWANGI 5TH

DEFENDANT

ELC NO. 537 OF 2007

Ruling

FORREST INVESTMENT LTD 6TH

DEFENDANT

MARTIN MAINA MWANGI 7TH

DEFENDANT

TERESIAH WANGUI NJOKA 8TH

DEFENDANT

TERESIAH WANGUI MURIITHI 9TH

DEFENDANT

JOSEPH MWANGI MAINA 10TH

DEFENDANT

MIRRIAM WANJIKU MWANGI 11TH

DEFENDANT

JOSEPH KINYUA KAMAU 12TH

DEFENDANT

ALEX GASPER NDEGWA NJUGUNA 13TH

DEFENDANT

CATHERINE WAIYUA CHARLES 14TH

DEFENDANT

ELC NO. 537 OF 2007

Ruling

JAMES MUNENE MURIITHI 15TH

DEFENDANT

JIINUE ASSOCIATES LIMITED 1ST INTERESTED

PARTY

HANNAH NJERI NGANGA 2ND INTERESTED

PARTY

LUKIHO COMPANY LIMITED 3RD INTERESTED

PARTY

RULING

1. What is before the Court for determination is the Plaintiffs' Notice of Motion application dated the 22nd May 2025 where they seek the following Orders:

a) That the Plaintiffs/Applicants be granted leave to amend their further amended plaint filed on 18th March 2025.

b) That the annexed second further amended plaint be deemed as duly filed.

c) That the costs of this application be provided for.

2. The application is premised on grounds on its face and on the Plaintiffs' joint supporting affidavit. They aver that their further amended plaint contains some typing errors at paragraph 3J in the description of the fourteen (14) Blocks with letter 'M' instead of 'N' (**Tinganga/Amner** instead of **Tinganga/Anmer** and paragraph 3.1 where parties under items 12 and 13 have been interchanged in that Alex should be indicated as the 13th Defendant while Joseph is supposed to be the 12th Defendant as per the case heading. Further, that from the way the proceedings in this case are unfolding, they have instructed their advocates to seek to have the 3rd Interested Party to participate in the proceedings as a substantive Party (16th Defendant) and also to include a prayer for adverse possession or compensation for the value of the developments in the land occupied by their members for the last twenty seven (27) years.

3. The application is opposed by the 2nd Defendant who filed a replying affidavit and Grounds of Opposition. He avers that the application is an abuse of court process as it is meant to delay the hearing and determination of the suit.
4. The application is also opposed by the 3rd Defendant vide a replying affidavit sworn by Francis Njuguna Ndegwa. He avers that the amendments sought are meant to be an unprocedural response to the 3rd Defendant's defence by introducing new facts.
5. In opposition, the 8th Defendant also filed a replying affidavit. She contends that this suit was filed about a decade ago and has been plagued by delays attributable to the Plaintiffs' conduct. Further, that the application is an attempt to further delay the expeditious disposal of the matter as the Plaintiffs have been granted leave to amend their plaint on not less than three prior occasions. She insists that she stands to suffer irreparable prejudice if the application is allowed as she has prepared her defence based on the

current pleadings, and any further amendment would necessitate a complete re-evaluation of her case, further legal costs and continued uncertainty.

6. The application was canvassed by way of written submissions.

Submissions

7. The Plaintiffs submit that the proposed amendments are consistent with the principle of fair hearing as envisioned under Article 50 of the Constitution of Kenya. Further that they are made in good faith and do not prejudice or cause substantial injustice to the 2nd and 8th Defendants. They submit that they have met the criteria for amendments as stated in **Grace Wangoi Kirwa & another v Jackson Kiplagat Arap Meli & 5 others [2019] KEELC 3900 (KLR)** and **Central Kenya Ltd v Trust Bank Ltd & 5 others [2000] eKLR**.

8. They also submit that the right to amend pleadings is exercisable at any stage of the proceedings. Further, that Order 1 Rule 3 and Rule 10 (2) of the Civil Procedure Rules allows the addition or substitution of parties where their involvement is necessary for the effective adjudication of the issues in dispute and that the inclusion of the 3rd Interested Party as a Defendant does not alter the character of the parties.
9. The 2nd Defendant submits that discretion to allow amendments is to be exercised in a manner that does justice to the parties, thus they should not introduce a new or inconsistent cause of action like the ones sought by the Plaintiffs, who are fishing for evidence as the case progresses. Further, that the 3rd Interested Party has been a party to this suit for a long time.

10. The 3rd Defendant relies on the case of **St. Patrick's Hill School Ltd v Bank of Africa Kenya Ltd [2018] eKLR** to submit that the application is an afterthought, filed late in

ELC NO. 537 OF 2007

Ruling

the day and is solely aimed at reframing the facts of the entire suit, which will greatly prejudice its case.

Analysis and Determination

- 11.** Upon consideration of the instant Notice of Motion application including the respective affidavits and submissions, the issue for determination is whether the Plaintiffs should be granted leave to amend their further amended plaint and if the capacity of 3rd Interested party should be substituted as the 16th Defendant.
- 12.** The legal framework governing amendment of pleadings is contained in Section 100 of the Civil Procedure Act and Order 8 of the Civil Procedure Rules. Order 8 Rule 3 (1), (4) and (5) 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.’ (4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under subrule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued. (5) An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action 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 suit by the party applying for leave to make the amendment.’

13. 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.”

14. On amendment, 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

ELC NO. 537 OF 2007

Ruling

injustice to the other side, or where such injustice can be compensated by costs.”

15. On substitution of capacity of the 3rd Interested party as the 16th Defendant, Order 1 Rule 10 (2) of the Civil Procedure Rules stipulates thus:

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as 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 in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

16. In this instance the Plaintiffs seek to further amend the Plaint to correct certain typographical errors, include a prayer for adverse possession and compensation for land as

well as substitute capacity of the 3rd Interested Party to be the 16th Defendant, which fact is vehemently opposed by the Defendants. It is trite that amendment of pleadings can be allowed at any time so long as it does not alter the cause of action.

17. On perusal of the pleadings herein, I note except for seeking to correct the typographical errors, changing the capacity of the 3rd Interested Party to be the 16th Defendant and putting an alternative prayer, nothing has changed in the amended Plaint. It is my considered view that insofar as the amendment is substituting a party, I find that since the cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief had already been claimed in the suit by the Plaintiffs', I opine that the Defendants will not be prejudiced if the amendments sought were allowed as they will have a chance to also further amend their Defences.

18. In the foregoing, I find that instant Notice of Motion application merited and will allow it. Costs in the cause.

19. I direct the Plaintiffs to file and serve their further amended Plaintiff within seven (7) days from the date hereof and upon service the Defendants to file and serve their respective amended Defences in fourteen (14) days.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 5TH
DAY OF NOVEMBER, 2025**

CHRISTINE OCHIENG
JUDGE

In the presence of:

Mboya for 12th Defendant

Gachoka for 1st Defendant

Kerubo holding brief for Kiprono 4th and 5th Defendants

Kimani for 2nd Defendant

Ms. Mwangi for Kioko Ndegwa for 8th Defendant

Chadianya for 3rd Defendant

Washika for 3rd Interested Party

Nganga for 1st Interested Party

ELC NO. 537 OF 2007

Ruling

Ms Mwangi holding brief for Kioko Ndegwa for 8th Defendant
Court Assistant: Joan

ORIGINAL