



REPUBLIC OF KENYA



**Omboto & 3 others v Board of Trustees National Social Security Fund & 2 others (Environment and Land Case 391 of 2019) [2025] KEELC 7570 (KLR) (4 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7570 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 391 OF 2019  
CA OCHIENG, J  
NOVEMBER 4, 2025**

**BETWEEN**

**ANDREW OMBOTO ..... 1<sup>ST</sup> PLAINTIFF  
BRENDA SABWA ..... 2<sup>ND</sup> PLAINTIFF  
STEPHEN KYALO MUIA ..... 3<sup>RD</sup> PLAINTIFF  
WINFRED BOSIBORI OBAGA ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**BOARD OF TRUSTEES NATIONAL SOCIAL SECURITY  
FUND ..... 1<sup>ST</sup> DEFENDANT  
LAND REGISTRAR, NAIROBI ..... 2<sup>ND</sup> DEFENDANT  
ATTORNEY GENERAL OF KENYA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. What is before the Court for determination is the Plaintiffs' Chamber Summons application dated the 28<sup>th</sup> March 2025 where they seek the following Orders:
  - a. That this Honourable Court be pleased to grant leave to the Applicants to substitute the Plaintiffs herein with the Association of Nyayo Embakasi Property Owners (ANEPO) and consequently take over and continue the present proceedings in place/and or on behalf of the Plaintiffs herein.
  - b. That the Applicants be granted leave to further amend the plaint on record as set out in the draft further amended plaint annexed hereto.



- c. That the annexed amended plaint annexed hereto be deemed as duly filed upon payment of the requisite court fees and the 1<sup>st</sup> Respondent be granted corresponding leave to re-amend its defence, if it so wishes within 7 days of service of the further amended plaint.
  - d. That this honourable Court do make any further orders that it may deem fit in the interest of justice.
  - e. That costs be in the cause.
2. The application is premised on grounds on its face and on the 1<sup>st</sup> Plaintiff's supporting affidavit. He avers that the Plaintiffs seek orders compelling the 1<sup>st</sup> Defendant to comply with provisions of the *Sectional Properties Act* by forming /operationalizing the corporation of owners with membership drawn from house owners in Nyayo Embakasi Estate and that the prayers fall within the incorporated objectives of the proposed Plaintiff hence the need to bring it to take over and continue the proceedings. Further, that there is also need to correct typographical errors in the amended plaint and that the amendments do not introduce new /inconsistent cause of action. He explains that the proposed Plaintiff could not have instituted this suit on their behalf in 2019 since it was incorporated in 2021, being that it was engaged in a registration dispute with the registrar of societies.
  3. The application is opposed by the 1<sup>st</sup> Defendant vide the replying affidavit of James Njiru, its acting assistant manager, Property Management. He contends that the Plaintiffs have failed to demonstrate why the proposed amendments are necessary. Further, that the intended substitution would substantially alter the character and nature of the suit as the proposed Plaintiff is an association representing more than 1000 members who don't have a claim against the 1<sup>st</sup> Defendant.
  4. He also avers that the draft amended plaint shows that the Plaintiffs seek to make substantive amendments, introduce a new cause of action and seek new reliefs, adding that delay in bringing the amendments is not satisfactorily explained and that the Plaintiffs were granted leave previously to amend their plaint and they have not given any satisfactory explanation why they now need to make further amendments to their pleadings and have not explained why they did not incorporate their proposed amendments in the previous amendment.
  5. The 1<sup>st</sup> Plaintiff also filed a supplementary affidavit in which he avers that on 15<sup>th</sup> March 2025, the management Committee of Association of Nyayo Embakasi Property Owners (ANEPO), which is the governing body bestowed with powers to pass resolutions under the AWEPO constitution passed a resolution authorizing the association to be enjoined in the present suit in place of the Plaintiffs.

### **Submissions**

6. The application was canvassed by way of written submissions. The Plaintiffs submit that pursuant to Order 1 Rule 14 and Order 1 Rule (10) (2) of the Civil Procedure Rules, this court has power to substitute a party. To this end, they relied on the cases of *EG v Attorney General*; *David Kuria Mbote & 10 Others (Interested Parties) [2021] eKLR* and *Meme v Republic [2004] 1EA 124*, *Mike Maina Kamau v Na-yomie Construction Limited & another; Sabaki Residents Association (Proposed Interested Party) [2020] eKLR*.
7. They also submit that the proposed amendments are not inconsistent or foreign to the suit as they stem from facts already pleaded in their amended plaint dated 12<sup>th</sup> July 2024 amending their plaint dated 6<sup>th</sup> December 2019, which has been responded to by the 1<sup>st</sup> Defendant vide their amended defence dated 8<sup>th</sup> August 2024. To this end, they relied on the case of *Simonian v Johar, (1962) EA 366 (UK)*. On delay in filing the application, they submit that it is not inordinate as it has been satisfactorily



explained. Further, that there is no demonstration on how the 1<sup>st</sup> Defendant will be prejudiced as it has an opportunity to re-amend its defence.

8. To buttress their averments, the Plaintiffs also relied on the cases of *St. Patrick's Hill School Limited v Bank of Africa Kenya Limited* [2018] KEHC 2539 (KLR) and in *Central Kenya Ltd v Trust Bank Ltd & 5 Others* [2000] eKLR.
9. On its part, the 1<sup>st</sup> Defendant cites the case of *Peter Ogecha v Kenyatta University* [2021] KEELRC 1811 (KLR) to submit that while Order 8 Rule 3 of the Civil Procedure Rules allows a party to amend their pleadings after close of pleadings, discretion ought to be exercised judiciously and properly.
10. It also relies on the case of *Masinde v Mwaura (Environment and Land Appeal 8 of 2020)* [2022] KEELC 4872 (KLR) to submit that amendments should be disallowed if they are not made in good faith and if they change the suit into one of a substantially different character as the ones sought herein.
11. Reliance is also placed in *Pravin Bowry v John Ward & Another* [2015] KECA 215 (KLR) and *Bernard Mwangi Nderitu & 5 Others v Ndiara Enterprise Limited* [2021] KEELC 589 (KLR), to submit that it would be unjust to substitute the Plaintiffs with the estate association when the Plaintiffs have not explained succinctly, how the Association or its over 1000 members will enable the Court to settle the dispute herein. Further, that membership in the Intended Plaintiff does not mean that it is a necessary party to the suit and it is highly prejudicial as it is an attempt to join more plaintiffs in the suit and litigate the same as a representative suit.
12. The 1<sup>st</sup> Defendant also submits that the Plaintiffs have failed to satisfactorily explain the undue delay in seeking to join the Intended Plaintiff in the suit too late in the day noting that the suit was filed more than 6 years ago. To buttress its averments, it relied on the following decisions: *Joshua Kimani v Kiso Enterprises Ltd, Ketan Doshi, Chief Lands Registrar & Attorney General (Environment & Land Case 134 of 2016)* [2020] KEELC 1199 and *Gidjoy Investments Limited v Zero Point Construction Company Ltd & 63 others (Environment & Land Case 301 of 2018)* [2024] KEELC 13819.

### **Analysis and Determination**

13. Upon consideration of the instant Chamber Summons application including the respective affidavits and submissions, the only issue for determination is whether the Plaintiffs should be granted leave to further amend their Plaintiff.
14. The Plaintiffs seeks to further amend the Plaintiff to substitute themselves with the Association of Nyayo Embakasi Property Owners (ANEPO).
15. In opposition, the 1<sup>st</sup> Defendant contends that the Plaintiffs have not explained the delay in applying for substitution. Further, that the amendments sought will change the character of the suit and are prejudicial, in that while the Plaintiffs instituted this suit in their own capacity and for alleged infringement of their individual rights, they now wish to substantially alter the nature and character of the suit and litigate the matter on behalf of an estate association representing more than one thousand (1000) members.
16. On substitution, Order 1 Rule 10 (1) of the Civil Procedure Rules stipulates thus:
  - “(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the



determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.

- (2) 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.”

17. On leave to amend pleadings, 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.’

18. On amendment, the Court of Appeal stated as follows in *Central Kenya Ltd v Trust Bank Ltd & 5 Others* [2000] KECA 367 (KLR);

“...Likewise mere delay is not a ground for declining to grant leave. It must be such delay as is likely to prejudice the opposite party beyond monetary compensation in costs. The policy of the law is that amendments to pleadings are to be freely allowed unless by allowing them the opposite side would be prejudiced or suffer injustice which cannot properly be compensated for in costs.”

19. In the case of *K. K. Lodgit Limited v Geminia Insurance Company Ltd & Another* (2021) eKLR the Court held that:

“... it is clear that courts will readily grant leave to amend pleadings in order to determine the real issue(s) in dispute. The only caveat is that a proposed amendment should not cause prejudice or an injustice to the opposing party. Such prejudice or injustice must be one that cannot be compensated by an award of costs. Further, the Court will not permit an amendment that completely changes the nature of a party’s case.”

20. The 1<sup>st</sup> Defendant has resisted the amendments and contended that the amendments seek to shift goal posts by introducing a representative plaintiff while the Plaintiffs had initially sued in their individual capacities. In *Bernard Mwangi Nderitu & 5 Others v Ndiara Enterprise Limited* [2021] KEELC 589 (KLR) the Court held as follows:

“The court has also taken into account that the proposed amendment has the effect of shifting goal posts since the Applicants want to introduce a new feature of the claim, that of a representative suit 10 years down the line. It has been stated that amendment of pleadings



should only be allowed.....This was cited by the Court of Appeal in Catherine Koriko & 3 others v Evaline Rosa [2020] eKLR making reference to Abdul Karim Khan –v- Mohamed Roshan (1965) EA. 289 that:

“ ...the courts will not permit an amendment that is inconsistent with original pleading and which entirely alters the nature of the defence or plaint...”

21. In this instance the Plaintiffs seek to further amend the Plaint to bring in the aforementioned association, which fact is vehemently opposed by the 1<sup>st</sup> Defendant. It is trite that amendment of pleadings can be allowed at any time so long as it does not alter the cause of action. I have had a chance to peruse the pleadings herein and note except for bringing in the aforementioned association that represents residents of Nyayo Embakasi property owners, the rest of the prayers in the Plaint have not changed. In my view insofar as the amendment is substituting a party, I opine 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’ applying for leave to make the amendment, I find that the issues in this suit touch on many residents and in bringing in the residents association, it will avoid further litigation and or multiplicity of suits. I further find that the Defendants will not be prejudiced if the amendments were allowed.
22. In the foregoing, I find that instant Chamber Summons application merited and will allow it. Costs in the cause
23. I direct the Plaintiffs to file and serve their Further Amended Plaint 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 4<sup>TH</sup> DAY OF NOVEMBER, 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Muuo for 1<sup>st</sup> Defendant

Tarus holding brief for Kamwara for Plaintiffs

Court Assistant: Joan

