



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT (LAND DIVISION) AT

NAIROBI

MILIMANI LAW COURTS

ELC NO. E163 OF 2022

SIRIGURDWARA RAMGARHIA RAILWAY

**NAIROBI REGISTERED TRUSTEES,
.....PLAINTIFF**

-VERSUS-

**ENGLAND ADAM
HUSSEIN1st**

DEFENDANT

**ABDULLAHI IBRAHIM
ALI2nd DEFENDANT**

**JAMES MWANGI
KAGUCHA3rd**

DEFENDANT

**NAIROBI CITY
COUNTY4th**

DEFENDANT

**REGISTRAR OF
TITLES5th**

DEFENDANT

**NATIONAL LAND
COMMISSION6th DEFENDANT**

RULING

A. Introduction

1. Before this Court is a Notice of Motion dated 4th June 2025 brought by the 6th Defendant/Applicant, the National Land Commission, under Sections 1A, 1B and 3A of the Civil Procedure Act, and Order 8 Rule 3(1) and (5) of the Civil Procedure Rules, 2010.
2. The Applicant seeks leave to amend its Statement of Defence in terms of the draft annexed to the application, and for costs of the application to be provided for.
3. The application is supported by the affidavit of BRIAN IKOL, sworn on even date, who is the Director of Legal Affairs and Dispute Resolution of the 6th Defendant. The affidavit sets out the grounds upon which the application is premised, namely that:
 - a) The 6th Defendant's original Statement of Defence dated 24th March 2023 was filed based on inaccurate information resulting from a typographical error in the Part Development Plan (PDP) reference number cited in a letter dated 1st December 2022 to the Director of Physical Planning.
 - b) Due to this error, the response received on 6th December 2022 from the said office indicated that the PDP was unapproved, whereas the correct PDP was in fact approved.

- c) The Applicant now seeks to correct this inadvertent error to ensure that its pleadings accurately reflect the correct factual position and to assist the Court in resolving the real issues in controversy.
4. It is the Applicant's case that the amendment is necessary, made in good faith, and will not occasion any prejudice to the other parties, but will instead aid the Court in achieving substantive justice.

B. Response

5. The application is opposed by the 1st Defendant, ENGLAND ADAM HUSSEIN, who swore a Replying Affidavit dated 24th June 2025.
6. The 1st Defendant contends that the application is an afterthought and a delaying tactic, arguing that all the material facts sought to be introduced by way of amendment were within the knowledge of the 6th Defendant at the time of filing its original defence.
7. She avers that the proposed amendments are not minor corrections but introduce new and inconsistent factual positions, contrary to the 6th Defendant's earlier pleadings, and that allowing such amendments will prejudice the 1st to 3rd Defendants and delay the conclusion of the suit.
8. The 1st Defendant further asserts that the application offends the overriding objectives of the Civil Procedure Act, as the intended amendment would neither expedite nor facilitate the just resolution of the dispute but rather change the character of the defence entirely.

C. Non-Participation by Other Parties

9. The Plaintiff and the Interested Party (Kenya Rural Roads Authority - KeRRA) did not file any response to the application and are therefore

deemed not opposed.

10. When the matter came up before the Court on 31st July 2025 for confirmation of filing of submissions, counsel for the 5th Defendant (Registrar of Titles) indicated that his client had not been served with the application.

D. The submissions

a) 6th Defendant/Applicant's Submissions

11. Counsel for the Applicant filed submissions dated 29th July 2025 and submits that the motion dated 4th June 2025 seeks leave to amend the defence to correct an inadvertent typographical error in the PDP reference cited in the Applicant's letter of 1st December 2022, which yielded an erroneous response on 6th December 2022 about approval status. The amendment is said to be in good faith, necessary to place the true factual position before the Court, and will not prejudice the other parties as the matter has not proceeded to hearing.
12. On the law, the Applicant relies on **Section 100 of the Civil Procedure Act** and **Order 8 Rules 3 & 5 of the Civil Procedure Rules, 2010**, urging that amendments should be allowed at any stage to facilitate determination of the real questions in controversy, absent demonstrable prejudice not compensable by costs. The Applicant emphasizes that the proposed changes merely align the pleadings with accurate PDP particulars already central to the dispute.
13. In support, the Applicant cites **Central Kenya Ltd v Trust Bank Ltd [2000] EALR 365**, **St. Patrick's Hill School Ltd v Bank of Africa [2018] eKLR**, **NWK v BKG [2022] KEHC 13327**, **Institute for Social Accountability v Parliament of Kenya [2014] eKLR**, and **Bosire Ogero v Royal Media Services [2015] eKLR**, for the propositions that

amendments are to be liberally granted, that mere errors/misdescriptions are curable, and that prejudice means prejudice not remediable by costs.

b) **1st -3rd Defendants' Submissions (in Opposition)**

14. The 1st-3rd Defendants filed their submissions dated 29th July 2025 opposing the motion as an afterthought and a delaying tactic, contending the 6th Defendant possessed all relevant information at the time of the original defence and now seeks to shift to a new and inconsistent position under the guise of correction. They maintain the proposed changes are not minor, would alter the character of the defence, and would prejudice their case and delay resolution, contrary to the overriding objective. They also reiterate their factual stance regarding L.R. No. 209/12596 as public land reserved for road/parking/loading.
15. Legally, while acknowledging the Court's discretion under Order 8, they urge that leave should be declined where amendments are late, inconsistent with prior pleadings, introduce new matters, or cause injustice not compensable by costs; they invoke Order 2 Rule 6(1) on inconsistent pleadings and Sections 1A/1B CPA on expedition and proportionality.
16. They rely on **Elijah Kipngeno Arap Bii v KCB [2013] eKLR, Trishcon Construction Co. v Landmark Holdings [2016] eKLR, Rose Kandie v Esther Kipkemboi Kiplangat [2016] eKLR, Allan George Njogu Kamau v National Bank of Kenya [2019] eKLR, John Mulwa Kang'aatu v Pan African Insurance [2015] eKLR, Daniel Ngetich v K-Rep Bank [2013] eKLR, Triple Eight Investments (Kenya) Ltd v City Finance Bank [2018] eKLR, and Andrew Ouko v KCB [2014] eKLR**, to submit that amendments must be timeous, not piecemeal, must not transform the action into one of a substantially different character,

and should be refused where they prejudice the opposite party or abuse the process.

E. Analysis and Determination

17. I have keenly assessed all the filed pleading, the written submissions and the cited authorities by the parties pertaining to the application dated 4th June 2025 by the Defendant/Applicant herein and the relevant provisions of the statutes. In order to reach a just and fair decision on the matter, the Court finds the following three (3) issues arise for determination.

- a) Whether the Notice of Motion application dated 4th June 2025 by instituted by the Defendant/Applicant herein seeking for leave to amend its Defence has any merit.
- b) whether the parties herein are entitled to the orders sought from the filed application.
- c) Who will bear the Costs of the application?

Issue No. a). Whether the Notice of Motion application dated 4th June 2025 by instituted by the Defendant/Applicant herein seeking leave to amend its Defence has any merit.

18. The legal principles governing amendment of pleadings are provided for under **Order 8 Rules 1,2 and 3 of the *Civil Procedure Rules, 2010***. **Rules 3** on amendment with leave 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 of 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.
 3.
 4.
 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.”
19. Additionally, these principles upon which a Court acts in an application to amend pleadings before/during trial are well settled and stated in a myriad of cases. For instance, Bramwell, LJ in the case of:- ***“Tildesley - Versus - Harper” (1878), 10 Ch D*** at Page 296 stated as under: *“My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide, or that, by his blunder he has done some injury to his opponent which could not be compensated by costs or otherwise...”*
20. Further to this in the case of:- ***St Patrick’s Hills School Limited - Versus - Bank of Africa Kenya Limited***” eKLR (2018) where courts held, *inter alia*: *“The general rule on this subject is that amendments to pleadings sought*

before the hearing should be freely allowed if they can be made without injustice to the other side, and there is no injustice if the other party can be compensated by costs. (**See Eastern Bakery - Versus - Castelino (1958) EA 461**). The main principle is that an amendment should not be allowed if it causes injustice to the other side (see “Chitale, P BB”). On the same subject, in the case of **Abdul Karim Khan - Versus - Mohamed Roshan (1965) EA289 (CA)**, the court laid down the principle that the courts will not permit an amendment that is inconsistent with original pleading and entirely alters the nature of the defence or plaint. The principles upon which a court acts in an application to amend a pleading before/during trial are also well settled and succinctly stated in **Eastern Bakery - Versus - Castelino, (1958) EA 461 (U) at p 462**: “It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearings should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs.”

21. Also, in the case of “**Joseph Ochieng & 2 others Trading as Aquiline Agencies - Versus - First National Bank of Chicago [1995] eKLR** the Court of Appeal clearly set out the principles under which Courts may grant leave to amend the pleadings. The same is as follows:-

- a) The power of the court to allow amendments is intended to determine the true substantive merits of the case;
- b) The amendments should be timeously applied for;
- c) Power to amend can be exercised by the court at any stage of the proceedings;

- d) That as a general rule however late the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side;
- e) 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 limitations Act subject however to powers of the court to still allow an amendment notwithstanding the expiry of current period of limitation.
22. Applying the principles laid down above to the circumstances of the instant case, it will be noted that I note that the 6th Defendant annexed a draft amended defence to its motion, as required under **Order 8 Rule 7(1)** of the Civil Procedure Rules. A close perusal of the annexed draft reveals that the intended changes are confined to clarifying specific factual aspects relating to the Part Development Plan (PDP) reference and to aligning the 6th Defendant's position with the official communication and records subsequently verified by the Director of Physical Planning.
23. The draft does not depart from the substance of the original defence; rather, it refines and corrects the factual foundation upon which the 6th Defendant's earlier position was anchored. The amendments seek to reflect the accurate description of the suit property, L.R. No. 209/12596, and to set out the 6th Defendant's clarified position regarding the approval status of the PDP that informed the allocation and use of the land.
24. These changes, in the Court's view, do not introduce a new or inconsistent cause of action nor do they seek to transform the nature of the 6th Defendant's defence. They instead ensure that the pleadings reflect the correct factual and legal position, thereby enabling the Court to determine the real issues in controversy on the basis of verified

information from the statutory office charged with physical planning.

25. The Court further notes that the matter remains at the pre-trial stage. No directions on hearing have been issued and no oral or documentary evidence has been taken. Consequently, the 1st-3rd Defendants will not suffer prejudice that cannot be remedied by an award of **costs** or by seeking corresponding leave to amend their pleadings should the need arise. The timing of this application, though later than ideal, has not disrupted any scheduled hearing or procedural milestone in the case.
26. In keeping with the reasoning in **NWK v BKG [2022] KEHC 13327** and **Institute for Social Accountability & Another -Vs- Parliament of Kenya [2014] eKLR**, this Court is persuaded that permitting such an amendment serves the overriding objectives under **Sections 1A and 1B of the Civil Procedure Act**, by facilitating the just, expeditious, and proportionate resolution of the dispute. Denying the amendment would have the undesirable effect of binding the Court and the parties to a defence premised on information now shown to be inaccurate, thereby impeding a fair and substantive determination of the issues.

Issue No. b). Whether the parties herein are entitled to the orders sought from the filed application

27. From the material placed before me, it is evident that the proposed amendment will assist the Court in resolving the substantive issues surrounding the ownership, allocation, and use of L.R. No. 209/12596, which lies at the heart of this dispute. The amendment neither reopens settled issues nor introduces an inconsistent defence. It will, instead, enable the Court to adjudicate upon the true facts without being constrained by procedural technicalities.

28. This position accords with **Article 159(2)(d)** of the Constitution, which directs courts to administer justice without undue regard to technicalities, and the overriding objectives of **Sections 1A and 1B of the Civil Procedure Act**, which require the Court to ensure that justice is delivered efficiently, fairly, and proportionately.
29. Consequently, the Court finds that the Applicant is entitled to the orders sought, and the draft amended defence annexed to the application shall stand as the Amended Statement of Defence upon filing and service within the period directed by this Court.

Issue No. c). Who will bear the costs of the application.

30. The issue of costs lies within the discretion of the Court under **Section 27(1) of the Civil Procedure Act**, though the general rule remains that costs follow the event. While the 6th Defendant/Applicant has succeeded, I take into account that the need for this amendment arose from its own inadvertence and that the matter is yet to proceed to hearing.
31. Accordingly, and in the spirit of fairness, efficiency, and to avoid escalating costs in a matter still pending trial, I direct that each party shall bear its own costs of this application.

F. Conclusion & Disposition

32. For the foregoing reasons, the Court finds that the Notice of Motion dated 4th June 2025 is meritorious and makes the following orders:
1. The 6th Defendant's application dated 4th June 2025 is hereby allowed.
 2. The 6th Defendant is granted leave to amend its Statement of Defence in terms of the annexed draft.

3. The Amended Defence shall be filed and served within fourteen (14) days of this ruling.
4. Any party wishing to file a response thereto shall do so within fourteen (14) days of service.
5. Each party shall bear its own costs of the application.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **13th** day of **November, 2025.**

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

..... for the Plaintiff
 for the 1st Defendant
 for the 2nd Defendant
 for the 3rd Defendant
 for the 4th Defendant
 for the 5th Defendant
 for the 6th Defendant
 for the Interested Party
Philomena W...... Court Assistant