



REPUBLIC OF KENYA



**Muigai v Waruhiu & 6 others; Chief Land Registrar (Proposed Defendant) (Environment and Land Case 253 of 2019) [2025] KEELC 8656 (KLR) (15 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8656 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 253 OF 2019  
CA OCHIENG, J  
DECEMBER 15, 2025**

**BETWEEN**

**NGENGI MUIGAI ..... PLAINTIFF**

**AND**

**GEORGE KANGETHE WARUHIU ..... 1<sup>ST</sup> DEFENDANT**

**GRACE WANJIKU GITHU ..... 2<sup>ND</sup> DEFENDANT**

**SAMUEL KAMAU MACHARIA ..... 3<sup>RD</sup> DEFENDANT**

**JOSEPH GILBERT KIBE ..... 4<sup>TH</sup> DEFENDANT**

**SOLOMON WILSON KARANJA ..... 5<sup>TH</sup> DEFENDANT**

**SCENERIES LIMITED ..... 6<sup>TH</sup> DEFENDANT**

**KENYA REINSURANCE CORPORATION ..... 7<sup>TH</sup> DEFENDANT**

**AND**

**CHIEF LAND REGISTRAR ..... PROPOSED DEFENDANT**

**RULING**

1. What is before Court for determination is the Plaintiff's Chamber Summons application dated the 4<sup>th</sup> April, 2025 including the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants' Notice of Motion application dated the 17<sup>th</sup> April, 2025.
2. In the Plaintiff's application dated the 4<sup>th</sup> April, 2025, he seeks the following Orders:
  1. Spent



2. That the Plaintiff be and is hereby granted leave to join the Chief Land Registrar to this suit as a Defendant.
  3. That the Plaintiff be and is hereby granted leave to amend his Plaint as per the draft Further Amended Plaint filed herewith.
  4. That the Further Amended Plaint together with the Plaintiff's trial bundle be served upon all the Defendants within 14 days of this order.
  5. That the Chief Land Registrar be and is hereby ordered to file in Court copies of ALL documents and records at the Land Registry relating to the following properties:
    - i. Land Reference No. 216/8 (Original Number 216/4/6) Volume N.49 Folio 125.
    - ii. Land Reference No.12261 Grant No. I.R 29452; and
    - iii. Land Reference No. 12236 Grant No. I.R 73976
  6. That the costs of and incidental of this application be in the cause.
3. The application is premised on grounds on its face and the Plaintiff's supporting affidavit. He contends that there is need to join the Chief Land Registrar in these proceedings and highlights alleged transactions over the suit title. He insists that the Chief Land Registrar being a custodian of all documents pertaining to the suit title in dispute herein is key in ascertaining whether the due process and the requisite procedures were adhered to, during the alleged amalgamation. Further, that the alleged amalgamation and issuance of a new title could not have been done without the participation of the Land Registry. He explains that the addition of the Chief Land Registrar and proposed amendments to the Plaint will help determine the real question in controversy between the parties herein. He claims Grace Wanjiku Githu passed away and is yet to be substituted, hence the suit abated and there is need to remove her name. Further, that Joseph Gilbert Kibe is also deceased and was substituted with his legal representative.
  4. The 1<sup>st</sup>, 3<sup>rd</sup> to 6<sup>th</sup> Defendants opposed the instant application and filed a replying affidavit sworn by the 3<sup>rd</sup> Defendant SAMUEL KAMAU MACHARIA where he insists that the Plaintiff has sworn a false affidavit. He made reference to his affidavit sworn on the 16<sup>th</sup> October, 2019. He argues that the instant application and the said Further amended Plaint are oppressive pleadings. He highlights proceedings in various related suits and contends that they paid Mama Ngina Kenyatta, the entire purchase price of Kshs. 21 million and her late husband's estate has no claim against them. Further, that the Plaintiff's claim is fraudulent and is barred by the res judicata doctrine as he got an award from an Arbitral Tribunal but the same is stale. He argues that the Land Registrar, Mama Ngina Kenyatta and the Director of Survey should also be joined in these proceedings as necessary parties. He insists that in the event the application for amendment is allowed, there should be an order that all the Defendants do have liberty to amend their defences.
  5. In the application dated the 17<sup>th</sup> April, 2025, the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants' seeks the following Orders:
    1. That the Honourable Court be pleased to order the Plaintiff to deposit Kshs.20,000,000/= as security for costs for the 3<sup>rd</sup> to 6<sup>th</sup> Defendants within 30 days.
    2. That if the Plaintiff does not deposit the said Kshs. 20,000,000/= the suit be struck out with costs.



6. The application is premised on the grounds on its face and the supporting affidavits of SAMUEL KAMAU MACHARIA. The Applicants contend that over the last twenty five (25) years, the Plaintiff in pursuit of the claim herein, has filed suits against them, but the said suits have been determined against him. They outlined the suits and provided a history of the dispute herein. They contended that the Plaintiff has made them incur substantial costs over the said twenty-five (25) years. They insist that the Plaintiff has been abusing the Court process.
7. The Plaintiff opposed the instant application by filing a replying affidavit where he deposes that the said application is unmerited. He insists that there is need to have all issues raised heard and determined. He contends that the application is brought in bad faith. He confirms that he is a retired Member of Parliament, business man and a man of means. He avers that the dispute herein has not been previously determined as claimed. Further, he proceeds to highlight the various related suits and their respective positions. He reiterates that the Defendants have never filed their Defences to the amended Plaintiff.
8. The two applications were canvassed by way of written submissions.

### **Analysis and Determination**

9. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the following are issues for determination: Whether the Chief Land Registrar should be joined in these proceedings as a Defendant. Whether the Plaintiff should be granted leave to amend the Further Amended Plaintiff. Whether the Plaintiff should be ordered to pay Kshs. 20,000,000/= as security for costs failure of which the suit should be struck off with costs.

### **As to Whether the Chief Land Registrar should be joined in these proceedings as a Defendant.**

10. The Plaintiff as sought for joinder of the Chief Land Registrar as he is the custodian of all documents in respect to the suit property.
11. On joinder, Order 1 Rule 10 (2) of the Civil Procedure Rules stipulates as follows:

'. (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.'  
Emphasis Mine

12. From a reading of these legal provisions while applying them to the circumstances hand, I opine that since the Chief Land Registrar is the custodian of all the documents in respect to the suit property, he is indeed a necessary party herein and will allow his joinder. I will however decline to make an Order on production of the documents sought at this juncture.

As to whether the Plaintiff should be granted leave to amend the Further Amended Plaintiff.

13. The Plaintiff has sought for leave to amend his further amended Plaintiff which fact is opposed by the 1<sup>st</sup>, 3<sup>rd</sup> to 6<sup>th</sup> Defendants. On amendment of pleadings, 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 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.’

14. Further 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 defect or 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.’

15. In the case of *Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited* [2013] eKLR, the Court of Appeal while dealing with issues of amendment held as follows:

“The law on amendment of pleading in terms of section 100 of the *Civil Procedure Act* and Order VIA rule 3 of the repealed Civil Procedure Rules under which the application was brought was summarized by this Court, quoting from Bullen and Leake & Jacob's *Precedents of Pleading - 12th Edition*, in the case of *Joseph Ochieng & 2 others vs. First National Bank of Chicago*, Civil Appeal No. 149 of 1991 as follows:- “The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); 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; that the proposed amendment must not be immaterial or useless or merely technical; that 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.”

16. In the current scenario, I note the Plaintiff albeit late seeks to bring to fore certain issues in respect of history of the suit property herein and also join the Chief Land Registrar as he is the record keeper of all the documents in respect to the transaction, which is in dispute herein. Insofar as the 1<sup>st</sup>, 3<sup>rd</sup> to 6<sup>th</sup> Defendants have opposed the application herein, noting that this is an old matter, however as a Court, I opine that it is pertinent for all parties to present all facts in respect to a dispute to enable it, make a proper determination on the true, substantive merits of the case. Further, from a reading of the legal provisions cited above, it is clear that the purpose of amendment is to “determine the real question in controversy or issue raised, and it can be done “at any time” which means from the time the suit is filed upto finalization, which is not the position in this instance. It is my considered view that the 1<sup>st</sup>, 3<sup>rd</sup> to 6<sup>th</sup> Defendants have not demonstrated any prejudice they stand to suffer since they will be granted leave to file a response to the Further Amendment Plaint. Based on the facts as presented while relying on the legal provisions certain above as well as associating myself with the quoted authority, I find the instant application merited and will allow it.



**Whether the Plaintiff should be ordered to pay Kshs. 20,000,000/= as security for costs failure of which the suit should be struck off with costs.**

17. Order 26 Rule 1 of the Civil Procedure Rules gives this Court discretion to order that security for the whole or any part of the costs of any Defendant or third or subsequent party be given by any other party.

18. As regards security for costs, the Supreme Court stated as follows in *Westmont Holdings SDN BHD v Central Bank of Kenya & 2 others* [2023] KESC 11 (KLR);

“In our view, there ought to be a balance for the two competing rights that is, the right to access to justice and the right to security for costs. Unlike the right for security for costs, the right to access to justice is guaranteed in *the Constitution* and as demonstrated in article 24 above, can only be limited by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including the nature of the right or fundamental freedom; the importance of the purpose of the limitation; the nature and extent of the limitation; the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and freedoms of others; and the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.....We have shown that it is the duty of the court to balance the injustice to the plaintiff pursuing a proper claim. We state that the final result in such a balance must be reasonable and modest. An order for additional security must neither impede access to justice nor stifle genuine claims and most definitely must not be oppressive. A court is not bound to make an order of a substantial amount. It is paramount that the order be just and not impede access to justice”

19. Further, in *Alpha Fine Foods Limited v Horeca Kenya Limited & 4 others* [2021] KEHC 4068 (KLR), it was held that:

“27. In an order for security for costs, the onus lies on the party seeking security for costs to go beyond merely showing that the Plaintiff is unable meet an adverse costs order. The applicant must satisfy the court that the main action is vexatious, reckless or otherwise amounts to an abuse. An action will be vexatious if it is obviously unsustainable. There was no argument before me to suggest that the Plaintiffs case is vexatious, reckless or otherwise amounts to an abuse.

28. The order sought is discretionary in nature. The court should have due regard to the particular circumstances of the case and considerations of equity and fairness to both parties. There must be some special fact, inherent to the action itself, which will persuade a court to exercise its discretion in favour of the applicant. The court should exercise its discretion in favour of granting the order only sparingly and in exceptional circumstances. The courts’ discretion must be exercised in a manner which is not discriminatory. The discretion should be exercised in a manner reflecting its rationale, not so as to put a litigant at a disadvantage compared with the defendant.”

20. Based on the facts as presented while relying on the legal provisions cited and associating myself with the decision quoted, I opine that since it is the 1<sup>st</sup>, 3<sup>rd</sup> to 6<sup>th</sup> Defendants who are in possession of the suit properties, with this Court set to determine its root and proprietorship, I opine that the prayer for



security for costs cannot suffice at this juncture as it will put the Plaintiff at a disadvantage compared to them. Further, the 1<sup>st</sup>, 3<sup>rd</sup> to 6<sup>th</sup> Defendant have not demonstrated that the Plaintiff will be unable to meet any adverse costs order, in the event he is unsuccessful.

21. In the foregoing, I find the 1<sup>st</sup>, 3<sup>rd</sup> to 6<sup>th</sup> Defendants' instant application unmerited and will dismiss it. I find the Plaintiff's Chamber Summons application merited and will allow it in the following terms:
- i. The Plaintiff to file and serve the Further Further Amended Plaintiff within fourteen (14) days from the date hereof.
  - ii. Upon service the 1<sup>st</sup>, 3<sup>rd</sup> to 6<sup>th</sup> Defendants are granted leave of 14 days to file and serve their Further Amended Defence.
  - iii. Costs in the Cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF DECEMBER, 2025**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Muturi Njoroge for Plaintiff

Ms Nduta Kamau holding brief for Dr. Kamau Kuria SC for the 1<sup>st</sup>, 3<sup>rd</sup> to 6<sup>th</sup> Defendants

Wafula for 7<sup>th</sup> Defendant

Court Assistant: Joan

