



REPUBLIC OF KENYA



Nzyoka & another v Kilumo & 4 others (Environment and Land Case E021 of 2021) [2025] KEELC 18387 (KLR) (18 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18387 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND CASE E021 OF 2021
EO OBAGA, J
DECEMBER 18, 2025**

BETWEEN

MBENYA NGENGA NZYOKA 1ST PLAINTIFF

SALMON MUTEMI KIVUVA 2ND PLAINTIFF

AND

MUTINDA KING'OO KILUMO 1ST DEFENDANT

WELLINGTON MUEMA MBUTHU 2ND DEFENDANT

DANIEL KYALO MBUTHU 3RD DEFENDANT

THE LAND REGISTRAR, MAKUENI 4TH DEFENDANT

THE HON ATTORNEY GENERAL 5TH DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 18th November, 2025 in which the Plaintiffs/Applicants seeks the following orders:
 - 1) Leave be granted to the Plaintiffs/Applicants to amend the application dated 11th November, 2025 in terms of the draft amended notice of motion annexed hereto.
 - 2) The said draft amended notice of motion annexed hereto be deemed as duly filed and served upon the Respondents.
 - 3) The costs of the application be provided for.
2. The Applicants contend that there was an omission in the motion sought to be amended in that the prayer for review of the court's judgment dated 21st October, 2025 was omitted. They state that the omission was not deliberate or intentional.



3. The Applicants state that the proposed amendments are necessary for the determination of the real issues in controversy. They state that the amendments will not cause any prejudice to the Defendants/ Respondents.
4. The Applicants' application was opposed by the Respondent based on a preliminary objection on the ground that a notice of motion is not a pleading which can be amenable to amendment.
5. The application was argued orally. The Applicants' counsel submitted that amendments should be allowed freely at any stage of the proceedings. He relied on the case of Central Kenya Ltd –vs- Trust Bank Ltd & 5 others (2002) eKLR where the court of Appeal stated that amendments should be allowed freely at any stage of proceedings to bring on board all issues in controversy.
6. The Applicants also relied on the Supreme Court decision in the case of Stephen Maina Githiga & 5 others –vs- Kiru Tea Factory Company Ltd (2019) eKLR where the Supreme Court allowed amendment of a notice of motion in terms of the draft annexed to the motion.
7. The Respondents submitted that a notice of motion is not a pleading which can be amended. They relied on the case of Ahmed Salat Fankey –vs- Mohammed Khalif & 4 others (2007) eKLR. The counsel for the Respondent also relied on the case of Fredrick Mwangi Mtega –vs- Garam Investment & Another where the court held that a motion is not a pleading which can be amended.
8. I have carefully considered the Applicants' application as well as the opposition to the same by the Respondents. I have also considered the oral submissions. The only issue is whether the amendments should be allowed. In the case of Central Kenya Ltd (Supra), the Court of Appeal stated that amendments to pleadings should be allowed freely at any stage of proceedings as long as they do not introduce a new cause of action or prejudice the other party.
9. In the instant case, the court has already rendered a judgment. An issue has arisen whether the portions due to the Defendants who had counterclaimed was expressed to be in feet or in metres. I am aware that some Superior Court Judges are of the view that a notice of motion is not a pleading which can be amended. I am equally aware of the doctrine of seniority of the court hierarchy. The decisions of the Supreme Court bind all other courts except the Supreme Court itself. In the case of Stephen Maina Githiga (Supra), the Supreme Court allowed amendment to a notice of motion. I will therefore go with the decision of the Supreme Court.
10. Amendments to a notice of motion can be allowed. What is not allowed is amendment to an affidavit in support of the motion. I therefore find that the Applicants' motion dated 18th November, 2025 has merits. It is allowed as prayed.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 18TH DAY OF DECEMBER, 2025.

In the Presence of:

Mr. Mukula for Plaintiff/Applicant

Mr. Munyasya for Defendant/Respondent



