



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC LAND CIVIL SUIT NO. E029 OF 2025
[FORMERLY MILIMANI ELC CIVIL SUIT NO 116 OF 2015]

BETWEEN

WATHANANGU HOLDINGS LTD.....PLAINTIFF

AND

THE HON. ATTORNEY GENERAL1ST DEFENDANT

UNIVERSITY OF NAIROBI.....2ND DEFENDANT

KENYA MEDICAL TRAINING CENTRE.....3RD DEFENDANT

CHIEF LAND REGISTRAR.....4TH DEFENDANT

NATIONAL LAND COMMISSION.....5TH DEFENDANT

COUNTER-CLAIM

UNIVERSITY OF NAIROBI.....
PLAINTIFF

VERSUS

WATHANANGU HOLDINGS LTD.....1ST
DEFENDANT

NATIONAL LAND COMMISSION.....2ND
DEFENDANT

CHIEF LAND REGISTRAR.....3RD
DEFENDANT

WILSON GACHANJA.....4TH
DEFENDANT

SILVER CLOUDS INVESTMENT LIMITED.....5TH
DEFENDANT

RULING

1. This ruling addresses the notice of motion dated 3/02/2025, filed by the plaintiff within the provisions of **Order 8 Rule 3** and **Order 8 Rule 7** of the **Civil Procedure Rules**. The following prayers are sought therein:

a) Spent

b) THAT the honourable court be pleased to grant the plaintiff leave to re-amend the amended plaint dated 13/02/2023 as indicated in the

draft re-amended plaint exhibited in the affidavit in support of the motion.

c) THAT if leave sought in prayer (b) above is granted, the plaintiff does file the re-amended plaint within 7 days along with supporting documents and/or witness statements.

d) THAT the costs of this application be in the cause.

2. The motion is supported by the grounds outlined in the motion and the supporting affidavit of Joseph Munyiri Munene, sworn on the same date. In a nutshell, he states that the plaintiff is pursuing a claim of Kshs 5,144,142,225.00 as detailed in the re-amended plaint. During the hearings, the defendants successfully objected to the inclusion of a report by Hass Consult Ltd, which has been excluded by the trial judge.
3. He maintains this decision has left the plaintiff without critical evidence to support a substantial part of its claim. In light of this setback, the plaintiff took proactive measures by commissioning Gimco Ltd to prepare a comprehensive valuation report. Hence, the report, dated 17/12/2024, which values the suit property at Kshs 450,000,000 and estimates the gross rental income from 2001 to 2027 at Kshs 1,268,187,061.

4. He further avers that the plaintiff has since submitted a draft re-amended plaint reflecting this new valuation, emphasising the necessity for this amendment to ensure a fair and just resolution. Allowing this re-amendment is crucial, as it will enable substantive justice without significantly disrupting the proceedings or unfairly prejudicing the defendants. He tendered a valuation report and the re-amended plaint.
5. On the service of the motion, the 2nd defendant, through Collins F. Omondi, challenged it through the replying affidavit he deposed on 28/02/2025, where, in brief, he informs the court that the motion before the court is *res judicata*, following a ruling made on 5/12/2024, which addressed a similar oral application by the plaintiff's counsel. Further, the plaintiff, on 6/12/2024, was to apply for review of that ruling, but instead submitted this motion.
6. He asserts, this attempt to introduce fresh evidence is improper, especially as the plaintiff previously abandoned calling the relevant witness to produce a valuation report. Allowing the proposed amendments to the plaint and the introduction of a new valuation report at this late stage would severely prejudice the 2nd defendant, who has already structured its defence and counterclaim in response to the claims as they currently stand. These amendments would represent a second amendment to the plaint, highlighting the plaintiff's apparent uncertainty regarding its own claims.

7. Additionally, he states the motion has been brought after an inordinate and unjustified delay, as the trial has already commenced. Since 2012, the plaintiff has consistently delayed proceedings through various adjournments and amendments, as documented in court records from multiple dates. He maintains that while parties do have the right to amend pleadings, such actions must be timely and should not disadvantage other parties involved in the case.
8. He asserts that the plaintiff's witness has already undergone cross-examination by the 2nd defendant's counsel, and the grounds of the defence have been clearly established. The plaintiff's desire to re-amend the plaint appears to be an effort to compensate for evidence that has not been substantiated, indicating uncertainty and speculative amendments of its claims. Therefore, the court should deny the motion to ensure fairness and integrity in the proceedings.
9. The plaintiffs also filed a notice of preliminary objection (PO) dated 28/02/2025 that raised the issue of *res judicata*. In this court's humble opinion, and after reviewing it, this court finds that it falls significantly short, as it does not meet the threshold established in **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors (1969) EA 696** because it raises matters of fact. In any case, the issues have been adequately addressed in the replying affidavit.

10. Although the 3rd defendant claims it filed grounds of opposition, the CTS system shows that, although it was assessed and invoiced, it was never paid for. Suffice it to say, it never filed grounds of opposition. A similar fate befalls the 4th defendant to the counterclaim's alleged notice of appointment by **M/s. Wambugu & Muriuki Advocates** dated 25/02/2025.

11. In accordance with the court's directive, the motion was canvassed through written submissions received from **Miss Kinoti & Kibe Co. Advocates** on behalf of the plaintiff, dated 19/05/2025; **Lutta & Co. Advocates** on behalf of the 2nd defendant, dated 20/06/2025; and **Tiego & Co. Advocates** on behalf of the 3rd defendant, dated 2/06/2025.

12. Accordingly, this court has examined the submissions and, after identifying the issues for resolution, this ruling will, in its analysis and decision, address the arguments presented in the competing submissions concerning the specific issue and also consider pertinent laws and judicial precedents cited. Therefore, having reviewed the motion, its grounds, affidavits, annexures, court record, as well as the opposing submissions, the following issue emerges for determination: **whether the motion is an abuse of court process and or/merited.**

13. Only the 2nd defendant addressed this issue of abuse of court process when it raised the question of *res judicata*. In addressing this matter as framed by the court, it is essential to

emphasise the pertinent laws and the prevailing jurisprudence concerning abuse of court processes.

14. Concerning the law, **Section 3A** of the **Civil Procedure Act** states that nothing in this **Act** limits or impacts the court's inherent authority to make necessary orders to achieve justice or prevent court process abuse. Furthermore, **Order 2 Rule 1 (d)** of the **Civil Procedure Rules** authorises the court, at any point during proceedings, to order the striking out or amendment of pleadings if they are deemed to misuse court processes.
15. An abuse of court process is any departure from established good order that significantly deviates from reasonable use of the court process; such abuse occurs when an individual makes excessive, improper, or contradictory use of court procedures, contravening their natural legal principles. Therefore, the court adopts the *dicta* in the persuasive decision in **Satya Bhama Gandhi v. Director of Public Prosecutions & 3 others [2018] KEHC 6100 (KLR)**, which outlined several examples of instances of abuse of court process, thus: -

***“(a) Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.*”**

(b) Instituting different actions between the same parties simultaneously in different court even though on different grounds.

(c) Where two similar processes are used in respect of the exercise of the same right for example a cross appeal and respondent notice.

(d) Where an application for adjournment is sought by a party to an action to bring another application to court for leave to raise issue of fact already decided by court below.

(e) Where there no iota of law supporting a court process or where it is premised on recklessness. The abuse in this instance lies in the inconvenience and inequalities involved in the aims and purposes of the action.

(f) Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.

(g) Where an appellant files an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent at the Court of Appeal.

(h) Where two actions are commenced, the second asking for a relief which may have been obtained in the first. An abuse may also involve some bias, malice or desire to misuse or pervert the course of justice or judicial process to the irritation or annoyance of an opponent.”

16. The second defendant has posited *res judicata* as a foundation for an abuse of court process; however, the threshold for this doctrine, as specified in our **Section 7** of the **Civil Procedure Act**, has not been met.
17. Nevertheless, after reviewing the record, particularly the court's ruling of 5/12/2024, which rejected the prayer by the plaintiff's counsel for introduction of a new expert report due to the matter having reached an advanced stage of the hearing, amongst other reasons, including prejudice to the defence, this court concludes that it is *functus officio* regarding the submission of a new report by the purported expert valuer. It consequently follows that the purported amendments, which were allegedly derived from this intended disqualified expert report, have no legs to stand on and cannot be entertained by this court.
18. It appears that the plaintiff is eager to seek a second opportunity by circumventing the process in order to present new evidence, and regardless of the manner in which it aims to introduce the valuer's expert report- whether through amendments or misrepresentations of court proceedings, which this court has not viewed favourably- such attempts will not be tolerated. To clarify, during the hearing, the court, upon hearing counsel for the parties, disallowed the plaintiff's witness from producing the expert report. The court permitted

the plaintiff's counsel to either request witness summons for the maker to produce the report or to abandon it. The plaintiff's counsel chose the latter option.

19. In consequence and for the above reasons, this court finds that the notice of motion dated 3/02/2025 is an abuse of the court process. It is disallowed, and the costs thereof shall abide by the outcome of the suit. A mention date shall be given for purposes of further directions on the hearing of various applications to cease acting by different counsel. Liberty applies to **M/s. Wambugu & Muriuki Advocates** to regularise its representation.

Orders accordingly.

Delivered and Dated at Machakos this 16th day of December, 2025.

**HON. A. Y. KOROSS
JUDGE
16.12.2025**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant

Mr. Mwathe holding brief for Mr. Kibe Mungai for plaintiff.

Miss Seleke holding brief for Mr. Lutta Senior Counsel for 2nd defendant.

Miss Masinde for 5th defendant – National Land Commission.

Miss Onyango holding brief for Mr. Tiego for 3rd defendant.

ORIGINAL