Kiolel v Moshoro Group Ranch & 12 others (Environment and Land Case 589 of 2017) [2025] KEELC 18551 (KLR) (19 December 2025) (Ruling)

Neutral citation: [2025] KEELC 18551 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ENVIRONMENT AND LAND CASE 589 OF 2017

LN GACHERU, J

DECEMBER 19, 2025

BETWEEN

PARMERES OLE KIOLEL ..... PLAINTIFF

AND

MOSHORO GROUP RANCH & 12 OTHERS & 12 OTHERS & 12 OTHERS ..... DEFENDANT

RULING

1. By a Notice of Motion Application dated 30th May 2025, the Plaintiff/Applicant herein , Seketo Ene Koilel, suing as the legal representative of the estate of Paremeres Ole Koilel, B sought for the following orders; -

    i. The Court to visit the disputed land, Cis-Mara Nairragie Enkare 877, to make a report to aid in dispensation of justice.

    ii. The Court be pleased to grant the Plaintiff leave to amend the Plaint in terms of annexed draft.

    iii. The said Plaint be deemed duly filed and upon payment of Court fees.

    iv. The Costs of this application be provided for.

2. The application is premised to be brought under section 1A, 1B, 3, 3A of the *Civil Procedure Act*, Cap 21 Laws of Kenya, and Order 1 Rule 10(2), Order 8 Rule 3 & 5, and Order 51 Rule 1 of the Civil Procedure Rules, 2010,

3. Further, the application is premised on the grounds that the amendment sought is necessary for the complete adjudication of the real issues in controversy and that the Defendants/respondents will not suffer prejudice if the orders sought are granted.

4. The application is supported by an Supporting Affidavit of the Plaintiff/Applicant sworn on 30th May 2023, who averred that at the time of filing this suit, as advised by his advocate on record, there was an oversight on their part. That the said oversight led to the Land Registrar Narok and Attorney General not being named as parties in this dispute.

5. That there are orders being sought in this suit for cancellation of title deeds, which can only be effected with the inclusion of the Land Registrar and Attorney General as parties in this suit. The Plaintiff/ Applicant further averred that it would be of beneficial for the court to visit the locus in quo to better understand the facts or context of this dispute.

6. The Defendants/Respondents filed Grounds of opposition dated 30th May 2025, and stated that the proposed amendment is an abuse of the court process, being the fourth amendment since the case's inception in 1998, and that litigation must come to an end.

7. They argued that the amendment is an afterthought, as pleadings had already closed, and the Defendant's trial bundle does not raise any new issues, indicating the amendment is a tactic to delay the matter. Furthermore, they opposed the joining of the Land Registrar and Attorney General, stating these issues had been addressed earlier.

8. They also objected to the Plaintiff/Applicant's request for a site visit, claiming that it is unnecessary, and a scheme to reopen the Plaintiff'/Applicant's closed case, and to introduce new evidence. The Defendants requested the court to dismiss the application with costs.

9. The Plaintiff filed their written submissions dated 18th July 2025, and submitted that the Attorney General should be enjoined in the proceedings pursuant to Order 1 Rule 10(2) of the Civil Procedure Rules, Section 12 of the *Government Proceedings Act* (Cap 40 Laws of Kenya), and Article 156 of *the Constitution* of Kenya (2010).

10. The Plaintiff/Applicant argued that the Attorney General's presence is necessary for the Court to effectually and completely adjudicate the issues in dispute, particularly for enforcing orders directed at the Land Registrar, including the cancellation of title deeds. The Plaintiff/Applicant also submitted that Section 12 of the *Government Proceedings Act* requires all proceedings against the government to be instituted against the Attorney General.

11. The Plaintiff further requested the Court to conduct a locus visit to the disputed land to observe physical features, boundary markings, developments, and occupation patterns, citing Section 3 of the *Environment and Land Court Act*, which allows the Court to administer justice efficiently and fairly.

12. To support locus visits the Plaintiff/Applicant relied in the cases of Michael Gitonga Muriuki v Attorney General & 4 others [2017] eKLR, Mutiso v Mutiso [1998] eKLR, and Joseph Kiplagat & Another v Attorney General,

13. The Plaintiff prays for the joinder of the Attorney General and a site visit to the disputed land so as to assist the Court in arriving at a just and informed decision.

14. The Defendants/Respondents filed their written submissions dated, through and submitted that the instant application lacks merit and should be dismissed with punitive costs to the Respondent.

15. It was the Defendants/Respondents argument that the application for amendment was brought too late, as the Plaintiff/Applicant had already closed their case. They emphasized that there is no limitation in the *Civil Procedure Act* for filing amendments to pleadings, but such amendments should ideally come before the hearing of a party's case.

16. The Defendants further contended that the Plaintiff/Applicant failed to join the necessary parties, such as the Attorney General and the Land Registrar Narok, as required under Order 1 Rule 3 of the Civil Procedure Rules. They argued that the omission of these parties makes the suit inconceivable, as the complaint against the group ranch is essentially a complaint against the government, which necessitates the involvement of government entities as per Chapters 284 and 287 of the Laws of Kenya and the *Government Proceedings Act* Chapter 40.

17. Additionally, the Defendants/Respondents opposed the Plaintiff/Applicant's prayer for a site visit, stating that it is not legislated and lacks importance as per the Legislature and Rule Committee. They dismissed the authorities cited by the Plaintiff, claiming they are from courts of concurrent jurisdiction and hold no value.

18. In conclusion, the Defendants/Applicants maintained that the application is an afterthought, overtaken by events, and should be dismissed.

19. The above are the grounds in support of the instant applicant, and in opposition to the same which this court has carefully considered and finds as follows; the two issues for determination are;

    i. Whether the court should allow the amendment to the Plaint;

    ii. Whether the court should allow an application for site visit.

20. From the court record, this suit was first filed in Nairobi in 2011. Th suit has been in the court corridor for over 20 years. The application heroin is premised under section1A, 1B ,3 and 3A of the *Civil Procedure Act*. The objective of section sectios 1A and 1B are very clear. The court is to facilitate expeditious, proportionate and affordable resolutions of disputes governed by the Act.

21. Further, a party or advocate having matter before any court has a duty to ensure that the overriding objectives of the act are met, and to comply with re directions issued by the court.

22. In furthering the overriding objectives of the act, the court has a duty to ensure that there is just determination of matters beefier it, efficient disposal of matters before the court, timely disposal of disputes among other duties.

23. This Application having been anchored under section 3A of the same Act, this Act donates powers to court to issue any orders that are necessary for the end of justice and to prevent abuse of the court process.

24. With the above in mind, the court will proceed to determine the two issues set out.

I. whether the court should allow amendment of the Plaint.

25. The plaint in issue was filed in this court in 2017, after the suit was transferred. The Defendants Advocate Mr Angina objected to the said amendment and argued that this is the fourth amendment that is being sought from the inception of the suit, which has been pending in court since 1998.

26. The Amendment sought to be done is joinder of the Land Registrar Narok and Attorney General as Defendants in the suit.

27. Further, the only paragraph added in the plaint is Para 15A, which reads;

> " 15A) the defendants carried out their threats to illegally allocate the Plaintiff's deceased Paremeres Ole Koilel land by attending the Land Control Board and obtained consent on 18th July 2000 and further cause subdivision of the Plaintiff deceased Paremeres Ole Koilel's

land into the office following parcels titles of which have already been issued to the 5th, 10th, 11th, 12th and 13th, defendants being Cis-Mara/Nairragie Enkare/878, 879, 880, 881, 882, 884."

28. Indeed a look at the proposed Further amended Plaint is more on joinder of parties than just mere amendment. The plaintiff applicant averred that it is necessary to amend the Plaint herein in order to assist the court determine the true and substantive merits of the case.

29. The application herein is brought under order 1 rule 10(2) of the civil procedure rules, which give the court discretion to join either the plaintiff or the defendant in the suit at any stage of the proceedings, if in the opinion of the court, such party is necessary in order to assist the court to effectually and completely adjudicate upon and settle the questions involved in the suit.

30. Indeed, the plaintiff should have sought for joinder of parties instead of amendment of the Plaint. However, the application is also anchored under Order 8 Rules 3 & 5, of the Civil Procedure Rules, which rules grants the court discretion to either allow or disallow amendment of pleadings at any stage of the proceedings. Of course such discretion should be added judiciously. See the case of Maranga vs Mwangi & 2 others[2025]KEELC 340(KLR).

31. The Defendants have objected to the joinder of the Land Registrar Narok, and the Attorney General at this stage after the plaintiff has testified, since the plaintiff did not give explanation as to why she omitted the inclusion of the two parties from inception of the suit.

32. The court pointed out earlier that it had a duty to facilitate the Overriding Objectives of the Act, which is to ensure just, expeditious and affordable resolutions of disputes before it.

33. When the matter came to court on 12th February 2025, this court gave a last adjournment to both parties. On 18th March 2025, Mr Musyoka appeared for the Plaintiff, and informed the court that he was ready to proceed, and he called one witness. He did not indicate that he needed to amend the plaint and add another party.

34. It is indeed clear that the prayer for joinder and amendment is an afterthought, and does not assist the court in meting the overriding objective of the act, which is to facilitate just, expeditious and affordable resolutions of disputes before the court. Why did the plaintiff not join the two public officers in the suit since inception?

35. Indeed joinder of a party being an exercise if judicial discretion, the court may deny the such joinder of a party in a case where the addition would be unnecessary, occasion prejudice or injustice to the existing parties, or impede the efficient and complete resolution of the dispute.

36. This suit has been in the judicial system for more than 20 years, and joinder of the two parties would indeed impede the efficient resolution of this matter. Further, the said joinder will occasion prejudice and/ or Injustice to the existing parties: herein being the Defendants, and the said prejudice being delay in resolution of this dispute cannot be adequately compensated by costs, such as occasioning unnecessary delay to the proceedings.

37. It is trite that the power to grant or refuse an application for joinder is a discretionary power of the court, which must be exercised judiciously based on the specific facts and circumstances of each case to ensure the efficient administration of justice. See Elc Suit No. 416 Of 2009;Moraho Limited Vs Sino hydro C orporation Ltd., where the court held;-

> "I am conscious of the overriding objective enshrined under Sections 1A & 1B of the *Civil Procedure Act* (Cap 21) as supported by Article 159 of *the Constitution*. Under the double-

O Principle, undue regard ought not be placed on technicalities whilst dispensing justice and when applying or interpreting the procedural rules. The main aim should always be to dispense justice and resolve disputes in a just, fair and proportionate manner." However, that objective applies to both parties with equal measure and force

38. Bearing in mind the overriding objective of the *Civil Procedure Act*, is to ensure expeditious disposal of matters before the court, this court declines to exercise its discretion and allow joinder of the two parties, and thus a further amendment to the Plaint.

39. It is trite that an amendment to a plaint can be denied if it causes injustice to the other party, and when it is made too late in the proceedings, involves undue delay, especially after evidence has been led. Courts would generally allow amendments to determine real issues under Order 8 Civil Procedure Rules, but denial occurs when the prejudice to the other party cannot be cured by costs . see the case of Makena vs Nalwa (Civil Appeal E127 of 2024) [2025]KEHC 1583(KLR).

40. Consequently, this court concurs with the Defendants submissions, and declines to allow the amendment of plaint as sought by the plaint.

II. Whether the court should allow site visit.

41. This matter went through the case management severally, and the plaintiff did not indicate at all that it intended to make any application for site visit. Why visit the site after so many years?

42. Courts, do visit the trial sites or locus in quo to gain first hand understanding of the physical environment, verify evidence, assess property conditions, and see exactly where events occurred, which is crucial for land disputes, and or environmental issues, or any case needing visual context beyond photos or descriptions, ensuring a fairer, more informed judgment.

43. The plaintiff /Applicant averred that the visit to the locus quo is necessary for the court to fully appreciate the situation on the ground and for the interest of justice to be met. This court has been pending in court for long, and the plaintiff never intimated at all, that there was need to visit the locus quo.

44. A visit to locus quo is a discretionary power of the court, and is an exception rather than the rule, and not a mandatory step. Consequently, a court may decline an application for a visit to the locus in quo if it determines that such visit is unnecessary or would not serve the interests of justice. At this juncture, this court finds no reason to order for the said site visit.

45. The court declines such an invitation because the said application is made too late in the proceedings, after the plaintiff had already given evidence, and this visit to the locus quo may be viewed as an attempt to re-open the case. This attempt is rejected to ensure procedural fairness and the sake of orderly conduct of litigation.

46. In the future, the court finds it necessary to visit such locus Quo, being a discretionary power, the court may order for such visit. For now, no good reasons have been advanced for the court to order such a site visit. The invitation is declined.

47. Having carefully considered and analysed the instant application dated 30th May 2025, and the rival written submissions, the court finds and holds that the same is not merited. Consequently, the instant application is dismissed entirely with costs to the Defendants/ Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 19TH DECEMBER 2025.

L. GACHERU

JUDGE.

Delivered online in the presence of

Elijah Meyoki - Court Assistant

Ms. Kores for Plaintiff/Applicant

Mr. Angina for Defendants/Respondents

L. Gacheru

Judge.