

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELCPET NO E008 OF 2020

TSUMA TEZI WANJE
PETITIONER

VERSUS

THE COUNTY LAND REGISTRAR KILIFI COUNTY & 10 ORS
RESPONDENTS

RULING

1. The petitioner's application dated 22nd of October 2025 has come up before me for determination. The same seeks an order granting leave to amend the petition in terms of the draft amended petition, and also that the draft amended petition be deemed as properly filed upon payment of the requisite filing fee. The application is supported by an affidavit of even date, sworn by the petitioner.
2. The grounds upon which that application has been brought are as follows: the petitioner filed the petition in the year 2020. The petitioner has of late come to know of information which was not known to him as at the time of filing of the petition; that the respondents had filed **PMCC 2303 OF 2003** which was dismissed. The petitioner has also realized that there are advocates who filed suit or acted on his behalf without his consent and/or instructions which led to the subdivision of the suit parcel of land and illegal transfer to the 9th to 11th respondents.
3. The application is opposed. The 11th respondents filed a sworn affidavit on behalf of himself, the 9th and 10th respondents herein in opposition. According to the 11th respondent the petitioner should not be allowed to amend the petition at this stage. He gives the following reasons: that the only proposal made towards amendment is the deletion of **paragraphs 10, 11** and a section of **paragraph 12** of the petition, but no additional information is sought to be added to the petition. The paragraphs proposed to be deleted have already been challenged by the respondents

in the application dated 30th June 2025, seeking to strike out the entire petition, which application is pending ruling; that those paragraphs sought to be deleted were premised on falsehoods; that in the application dated 30th June 2025 seeking to strike out the entire petition it was disclosed to this court that the application to grant in interim orders of injunction was declined by the court in **Kilifi Civil Suit Number 469 of 2009 Tsuma Tezi Wanje vs Ibrahim Yusuf and others**. It is further stated that these are discrepancies between the intentions evident in the application and its supporting affidavit and the drafted petition in that the allegations made in the application and supporting affidavit have not been incorporated into the draft amended petition; that notwithstanding the omission, it is stated by the deponent that the allegations had already been generally pleaded in the petition and more specifically in **paragraphs 12 and 21**; that there is nothing new that needs to be added which is not already in the petition; that to allow the proposed amendment amount to defeating justice, by preventing the court from referring to the said information in its ruling.

4. The petitioner filed submissions dated 31st October 2025 while the respondent relied on their replying affidavit as filed. The petitioner's submissions urge that there is need to grant leave to amend the petition in order to bring the real questions in controversy between the parties which require the determination of this code. He claims there was a conspiracy by the respondent to deprive him of his legally owned land without application and without securing the Land Control Board consent as a required for all agricultural land in Kenya.

ANALYSIS AND DETERMINATION

5. This court has examined the application the response and the submissions filed. It is correct as the 11th respondent put it in his replying affidavit that no additional information has been presented in the proposed amendments, and that on the contrary the proposed

amendments seek to delete some information from the petition. An examination of **paragraphs 10 and 11**, which it is proposed to be deleted by way of amendment, shows that in those paragraphs the petitioner was admitting to having filed **Kilifi RMCC NUMBER 469 OF 2009** and that he obtained injunctive orders in that suit in respect of land known as **KILIFI/ MTWAPA/ 663** and or any of its subdivisions **Kilifi/Mtwapa/2027** and **2028**.

6. This is not what was expected of the petitioner in view of the contents of his application in which he stated that additional information has come to his knowledge. This court would have been expecting that the petitioner would be adding such kind of information where there was none. Another example of information that the court would have expected to be added is contents elaborating on the respondent's filing of an ancient case, **PMCC 2303 Of 2003** and its contents and eventual fate.
7. It appears that now that the original file for **Kilifi Civil Suit Number 469 Of 2009** has at the orders of this court been brought before this court and attached to the petition record, the applicant has made his application to amend and disown whatever he apparently did in that case.
8. The question that then arises is whether the deletions proposed by the petitioner are material. Deleting paragraphs which had been pleaded in a petition and in which the petitioner had confessed to have undertaken certain actions sounds suspect and in a petition that had been supported by a sworn verifying affidavit it should not be allowed. I think he has to seek another way of dealing with those paragraphs and not amendment to delete them. This court is not convinced that the application dated 22nd October 2025 is made in good faith and it is hereby dismissed with costs to the respondents.

Dated, signed and delivered virtually on this 18th day of December 2025.

A rectangular box containing a handwritten signature in blue ink, which appears to read "Mwangi".

**MWANGI NJOROGE
JUDGE, ELC, MALINDI.**