

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. E339 OF 2022

CONSOLIDATED WITH ELC NO. E284 OF 2022

STELLA MARIS KAREGI NGAINE

**(Suing as a Legal Representative of the Estate of
JOHN MBETI MURIITHI - DECEASED)**

PLAINTIFF

VERSUS

JENNIFER WANGARI KAMAU 1ST

DEFENDANT

LUKE KIPCHUMBA 2ND

DEFENDANT

ERICK AGBEKO 3RD

DEFENDANT

THE LAND REGISTRAR, NAIROBI 4TH

DEFENDANT

ELC CASE NO. E339 OF 2022

Ruling

THE CHIEF LAND REGISTRAR, NAIROBI 5TH

DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 6TH

DEFENDANT

RULING

1. What is before Court for determination are two applications dated the 1st August, 2025 and 21st August, 2025. In the application dated the 1st August, 2025, the Plaintiff seeks the following Orders:

1) That the Honourable Court be pleased to grant leave to the Plaintiff to amend the Plaint dated 13th October, 2022 as shown in the draft amended Plaint annexed to the supporting affidavit in this application.

2) That corresponding leave be granted to the Defendants to amend their statements of Defence.

3) That costs be in the cause.

2. The application is premised on grounds on its face and on the supporting affidavit of STELLA MARIS KAREGI NGAINE. She avers that the 1st Defendant committed wrongful acts of trespass on the suit land and was sentenced to contempt of Court on 5th December, 2024. Further, that the 2nd Defendant purported to acquire a parallel title to the suit land. She explains that the acts of trespass and acquisition of a parallel title and sentencing occurred after filing of this suit. She reiterates that there is hence need to amend the Plaint as per draft amended Plaint annexed to the supporting affidavit to capture the new averments and particulars of fraud and illegality committed by the Defendants. Further, that she wishes to obtain orders of demolition.
3. The 1st Defendant opposed the instant application by filing Grounds of Opposition dated 8th August, 2025. She insisted that the suit is incompetent and amounts to abuse of the Court process. Further, that the Court lacks jurisdiction to grant leave to the Plaintiff to amend the Plaint, when the

summons was served when the suit had abated by operation of law and in violation of Order 5 Rule 1 (5) of the Civil Procedure Rules. She insists that this suit had abated and the application is an afterthought. Further, that the application is incurably defective and not legally tenable.

4. In the 1st Defendant's Notice of Motion application dated the 21st August, 2025, she seeks the following Orders:

- 1) That there is no live suit before the Court Plaintiff's suit herein having abated by failure of the Plaintiff to take any steps to prosecute the same within the period prescribed after service of summons as provided under Order 5 Rule 1 (6) of the Civil Procedure Rules.**
- 2) That the Plaintiff's entire suit be struck out for being statutorily abated.**
- 3) That the Plaintiff do bear the costs of this Application and the suit.**

4) That this Honourable Court lacks jurisdiction to entertain a suit which has abated.

5) Costs of this application.

5. The application is premised on grounds on its face and the supporting affidavit of JENNIFER WANGARI KAMAU. The 1st Defendant deposes that Summons to enter appearance was served upon the Defendant more than two years ago. Further, that the Plaintiff has failed to take any steps to prosecute this matter and the said summons to enter appearance have since lapsed. She insists that Plaintiff has lost interest in the matter and no extension of the summons has been sought.
6. The Plaintiff opposed the 1st Defendant's application by filing Grounds of Opposition dated the 18th December, 2025. She insists that the said application is not frivolous and vexatious as claimed. Further, that this suit is still at the pretrial stage and cannot abate due the pending applications. She

contends that the 1st Defendant has actively participated in this suit and has not demonstrated any prejudice for the alleged delay in prosecuting the matter.

7. The two applications were canvassed jointly through written submissions.

Analysis and Determination

8. Upon consideration of the two instant Notice of Motion applications including supporting affidavits, Grounds of Opposition and submissions, the following are the issues for determination:

- Whether this suit has abated.
- Whether the Plaintiff can be granted leave to amend her Plaint.

As to whether this suit has abated.

9. The 1st Defendant claims this suit has abated which fact is disputed by the Plaintiff. On abatement of suits, Order 24, Rule 4 of the Civil Procedure Rules provides that:

'(1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit. (2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant. (3) Where within one year no application is made under subrule (1), the suit shall abate as against the deceased defendant.'

10. In this instance I note there were pending applications in this matter which the Court was dealing with. Further, no party has died. In relying on the legal provisions quoted and

applying them to the circumstances at hand, I find that this suit has not abated as claimed by the 1st Defendant. Further, that this Court has jurisdiction to handle the Plaintiff's application seeking leave to amend her pleadings.

As to whether the Plaintiff can be granted leave to amend her Pleas.

11. The Plaintiff has sought leave to amend her Pleas and explained that certain circumstances have arisen in respect to the suit land including the 2nd Defendant's acquisition of another title, which she seeks to include in her pleadings. The 1st Defendant in opposition argues that the Court does not have jurisdiction to grant the Orders sought since this suit has abated.
12. On amendment of Pleas, 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.'

13. 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.'

14. 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.”

15. In the current scenario, I note the Plaintiff seeks to bring to fore certain issues in respect of the suit land on how the 2nd Defendant has acquired a fresh title and how the 1st Defendant has trespassed thereon. The 1st Defendant has vehemently opposed the amendment sought. However, as a Court, I opine that it is pertinent for all parties to present all facts in respect of 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 or issue raised by or depending on the proceeding” and it can be done“ at any time” that means from the time the suit is filed upto finalization, which is not the position in this instance. It is my considered view that if the Plaintiff is granted leave to amend her Plaint, the Defendants can then have corresponding leave to amend their respective defences. Further, there is no demonstrated prejudice which shall be caused if the amendments are allowed since the matter is still at the pre trial stage. 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 for amendment merited and will allow it.

16. It is against the foregoing that I find the application dated 1st August, 2025 merited and will allow it. I find the 1st Defendant’s application dated the 21st August, 2025

unmerited and will dismiss it. I proceed to make the following final Orders:

- 1) **The Plaintiff is granted leave of fourteen (14) days to file and serve her amended Plaintiff as shown in the draft amended Plaintiff annexed to the supporting affidavit in the application dated 1st August 2025.**
- 2) **Upon service the Defendants are granted corresponding leave of fourteen (14) days to file and serve their respective amended statements of Defence.**
- 3) **That costs be in the cause.**

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
15TH DAY OF JANUARY, 2026**

CHRISTINE OCHIENG

JUDGE

In the presence of:

ELC CASE NO. E339 OF 2022

Ruling

Musesya for Plaintiff in 339 of 2022

Ms Wanjiku holding brief for Mugo for Plaintiff sin 284 of
2022

Allan Kamau for 4th - 6th Defendants

Court Assistant: Joan

ORIGINAL