

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT KILGORIS
ELC E008 OF 2025

LEYIAN KAYA.....
.....PLAINTIFF

VERSUS

JULIUS ORAMAT KOTEENE.....
DEFENDANT

AND

MESHACK WANKURU MAROA (Suing as Representative of MEMA EBENEZER ENTERPRISES).....
INTERESTED PARTY

RULING

1. The application dated 9/10/2025 seeking amendment of the Plaint to reflect the joinder of the interested party Meshack Wankuru Maro (sued a representative of mama Elizabeth Enterprises) is subject of this ruling.
2. The grounds in support of the application; are *inter alia* that the;
 - (i) An application dated 24/06/2025 was allowed with the consequence of joinder of the interested party to these proceedings.
 - (ii) That the amendments are intended to bring before the court the real and current issue in dispute between the parties herein, which amendment shall not prejudice the Respondent.
3. The application is supported by annexed affidavit of Leyian Kaya the Applicant who reiterates the grounds in support of the application in his depositions and has annexed a draft amended plaint.
4. The application is opposed by the Replying affidavit of the Defendant Mr. Julius Oramat Koteene who depones *inter alia* that; -

- (i) Application is mischievous and an abuse of the court process,
 - (ii) Pleadings were closed long ago and directions given in the matter hence the amendment will defeat the overriding objectives of the court under section 1A and 1B of the Civil Procedure Rules.
 - (iii) The proposed amendment will change the cause of action as the Intended amendment is inconsistent with the original pleadings and fundamentally changes the nature and character of the suit as initially filed.
 - (iv) The amendment will cause hardship and prejudice to the Defendant as he has to file a fresh defence and procure new witnesses.
5. The court notes that the application for joinder of the interested party was not opposed as this application which is strenuously opposed as can be gamed from the Replying Affidavit.
 6. Parties were directed to file submissions in respect of the application.
 7. None of the parties filed their submissions in respect of this application, as directed and the court shall consider the same without the benefit of the submissions.
 8. It is common ground that an interested party Meshack Wankuru Maroa filed an application for joinder which application was allowed having not been opposed by the Respondents therein.
 9. The current application seeks to amend the plaint so as to introduce the interested party who was not a party *abinitio*.
 10. I have looked at the proposed amendments in the draft annexed plaint, and contrary to the depositions in the Replying Affidavit in opposition to the application that the amendment changes all and introduces a new cause of action. The proposed Amendment at paragraph 2A and 3 does not introduce a new course of action as it is simply descriptive of the parties.

11. Paragraph 19A to be introduced in the Amendment is similar to the previously paragraph 19 save for introduction of the interested party.
12. The reliefs sought against the Defendant/Respondent are still the same, and there will definitely no prejudice occasioned to the Defendant by way of the proposed Amendments which an order of costs cannot suffice. As the only prejudice will be to file an Amended defence.
13. Having found that the proposed amendment will bring order into the proceedings and bring out the real matters in controversy, and having found no prejudice will be visited on the Respondent in any event the court allows the application for amendment and directs as follows; -
 - (i) The plaintiff to file and serve the Amended Plaintiff within 7 days from today.
 - (ii) The Defendant to file an serve the Amended defence within 14 days after service of the Amended Plaintiff.
 - (iii) Costs of the application shall be in the cause.

Dated at Kilgoris 2nd day of February, 2026

Hon. M.N. Mwanyale
Judge

In the presence of

CA – Sylvia/Sandra/Clara

Ms. Mireri for the Defendant

Mr. Mwita Nyangi for Interested Party

N/A for the Applicants