



County Government of Trans Nzioa v Ekidor & 3 others (Environment and Land Case E027 of 2025) [2026] KEELC 632 (KLR) (11 February 2026) (Ruling)

Neutral citation: [2026] KEELC 632 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE E027 OF 2025**

CK NZILI, J

FEBRUARY 11, 2026

BETWEEN

COUNTY GOVERNMENT OF TRANS NZIOA PLAINTIFF

AND

JEPHETH LOTUKOI EKIDOR 1ST DEFENDANT

PHILIP OKOTH OKUNDI 2ND DEFENDANT

SARAH KAATHO 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

RULING

1. Through an application dated 14/11/2025, the applicant is seeking orders to file an amended plaint; leave be granted to the respondents to file amended defences, and any other suitable orders. The application is premised on grounds on its face and further grounds in the affidavit sworn by the County Secretary, Truphosa Amere.
2. The applicant deposes that it intends to amend the plaint dated 1/7/2025, to substitute the 1st defendant who passed on in 2002, which will assist the court in determining the issues on merits; it states that the application has been filed in good faith, and no prejudice shall be occasioned to the respondents.
3. The applicant deposes that in the plaint dated 1/7/2025, it sought orders that the leases on Kitale Municipality Block 6/238, 165, 164, 162, and 161 to the 1st – 4th respondents were made fraudulently and in excess of the 5th respondent's powers, rendering them null and void, since the suit parcels are public properties. The applicant also sought a permanent injunction and for the 5th respondent to rectify the register by cancelling the leases and certificates of lease on the suit parcels and to transfer the same to it. The plaint and the amended plaint are attached as annexures marked TA-1 and TA-2.



4. Even though there is a return of service dated 21/11/2025 indicating that the 2nd and the 5th respondents were served with the application on 18/11/2025, no responses have been filed.
5. The sole issue for determination is whether the applicant has met the threshold to be granted leave to amend its pleadings. Amendment of pleadings is governed by Section 100 of the Civil Procedure Act and Order 8, Rules 3 and 5 of the Civil Procedure Rules. The court has wide discretion to allow amendment of pleadings at any stage of the proceedings, if doing so will aid in determining the real issues between the parties.
6. Amendments should be freely allowed if they will not prejudice or cause injustice to the opposing party, which cannot be compensated with costs or other terms to be imposed by the court.
7. Further, amendments where there will be no injustice occasioned to the other side, and are necessary for determining the real questions in controversy between the parties, ought to be easily allowed. See Angelina Chepng'etich Kimaiti -vs- Tom Mong'are Nyariki & Another [2021] eKLR
8. In *Kassam -vs- Bank of Baroda (Kenya) Limited* [2002] 1 KLR 294, the court laid down the factors to be considered when dealing with an application for amendment of pleadings as:-
 - a. The party applying is not acting mala fides.
 - b. The amendment will not cause injury to the other side that cannot be compensated by costs.
 - c. The amendment is not a device to abuse the court process.
 - d. The amendment is necessary for the purpose of determining the real questions in controversy between the parties and to avoid multiplicity of suits.
 - e. The amendment will not alter the character of the suit.
9. From the court record, pre-trial directions are yet to be issued. The 2nd defendant has filed a statement of defence and counterclaim, amended on 8/9/2025. The other defendants are yet to file their respective defences.
10. What the applicant seeks here is an amendment of the plaint where it sued a dead party. In the Indian case of *C. Muttu -vs- Bharath Match Works* AIR 1964 Kant 293, the court observed that the suit against a dead man is a nullity from its inception, and an order made in the suit allowing amendment of plaint by substituting the legal representative of the deceased as the defendant and allowing the suit to proceed against him is also a nullity.
11. In *Pratap Chand Mehta -vs- Chrisna Devi Meuta* AIR 1988 Delhi 267, it was held that where a suit has been filed against a dead person, then it is a nullity and even a legal representative cannot be joined; or any other party, because it is just as if no suit had been filed.
12. The court went further to hold that where a suit has been filed against several persons, one of whom happens to be dead when the proceedings were instituted, then the proceedings are not null and void, but the court has to strike out the name of the party who has been wrongly joined.
13. The suit against the 1st defendant was dead on arrival, and so is this application. It is akin to flogging a dead horse. See *Manyange (Deceased) -vs- TG (Minor suing through her mother and next friend WMG)* (Civil Appeal E005 of 2022) [2024] KEHC 1083 (KLR) (7 February 2024) (Ruling) and *Limbe -vs- Wandhere & Anor* ELC Case E001 of 2021) (2023) KEELC 16456.



14. From the plaintiff's own admission, the 1st defendant herein was not alive when the suit was filed against him. Therefore, the suit against him is a nullity from inception, and a nullity which, therefore, cannot be rectified through amendments or substitution.
15. A void act is, in law, a nullity. It is not only bad, but incurably bad, as held in Benjamin Leonard McFoy -vs- United Africa Company Limited [1961] All ER 1169. The suit against the 1st defendant being a nullity, then the same is bad in law, and is automatically null and void, and cannot be. There being no doubt that the 1st defendant was dead at the time of filing this suit, the said deceased defendant cannot be substituted to breathe life into the suit.
16. The application is therefore dismissed for being incompetent. The amended plaint dated 1/7/2025 is struck out with no order as to costs. File marked closed.
17. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 11TH DAY OF FEBRUARY 2026.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Tonje for the plaintiff present

Teti for the 2nd defendant present

3rd and 4th defendants absent

