



**Kenya Church of Christ (Suing Through) Bishop Peter Macharia  
Wachira & 2 others v Karumbi & 6 others (Environment and Land Case  
266 of 2017) [2026] KEELC 610 (KLR) (11 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 610 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 266 OF 2017  
CA OCHIENG, J  
FEBRUARY 11, 2026**

**BETWEEN**

**KENYA CHURCH OF CHRIST (SUING THROUGH) BISHOP PETER  
MACHARIA WACHIRA ..... 1<sup>ST</sup> PLAINTIFF  
BISHOP PETER MACHARIA WACHIRA ..... 2<sup>ND</sup> PLAINTIFF  
ASINAH MACHARIA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**JOSEPH PETER KARUMBI KEINGATTI ALIAS JOSEPH KARUMBI  
KEINGATI, PETER KARUMBI KIINGATI ..... 1<sup>ST</sup> DEFENDANT  
ANDREW WAKITI GIKORE ..... 2<sup>ND</sup> DEFENDANT  
JOSEPH NDUATI NGENDO ..... 3<sup>RD</sup> DEFENDANT  
SAMWEL KARANJA KAMAU ..... 4<sup>TH</sup> DEFENDANT  
KIAMBU DANDORA FARMERS COMPANY LIMITED ..... 5<sup>TH</sup> DEFENDANT  
CHIEF LAND REGISTRAR- NAIROBI, MINISTRY OF  
LANDS ..... 6<sup>TH</sup> DEFENDANT  
KARIRA KINYANJUI THUO ..... 7<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before the Court for determination is the 1<sup>st</sup> Defendant's Chamber Summons application dated 16<sup>th</sup> June 2025 where he seeks the following Orders:



- a. That the 1<sup>st</sup> Defendant be granted leave to amend his pleadings dated 5<sup>th</sup> December 2022 as set out in the draft amended pleadings herein annexed.
  - b. That the draft amended pleadings annexed hereto be treated as the 1<sup>st</sup> Defendant's pleadings, and the same be deemed as duly filed and served.
  - c. That the parties herein be at liberty to amend their pleadings within 14 days hereafter if they so wish.
  - d. That the 1<sup>st</sup> Defendant be granted leave to file his Witness Statement.
  - e. That the Witness Statement annexed hereto be treated as the 1<sup>st</sup> Defendant's Witness Statement, and the same be deemed as duly filed and served.
  - f. That the costs of this Application be provided for.
2. The application is premised on grounds on its face and on the 1<sup>st</sup> Defendant's supporting affidavit and his supplementary affidavit. He avers that he was the Managing Director of the 5<sup>th</sup> Defendant from 1999, and upon retirement, he remained a trustee, which is the basis upon which the 5<sup>th</sup> Defendant retained the firm of messrs Odera Were Advocates to defend the suit on his behalf. He claims due to limited engagements between the said firm and himself, the said firm did not clearly clarify the issues in dispute. Further, that the 5<sup>th</sup> Defendant later informed him to secure the services of his own Advocates to defend him, independent of the 5<sup>th</sup> Defendant's Advocate.
  3. He confirms that he subsequently contracted James Maina Advocates but they never entered appearance to represent him and as a result of their inaction, he contracted the firm of messrs Derrick Ochieng Law Advocates, who obtained copies of all pleadings and noted that his previous Advocates had not filed a Witness Statement on his behalf. Additionally, they noted that his statement of defence dated 5<sup>th</sup> December 2022 did not comprehensively address the issues raised in the Plaintiffs' amended Complaint dated 6<sup>th</sup> February 2019, particularly on the issue surrounding the purported occupation of the suit properties by the Plaintiffs; the purported sale of the suit properties between the Plaintiffs and himself; the role of the 5<sup>th</sup> Defendant in the purported sale of the suit properties to the Plaintiffs and the purported issuance of certificate of allotment of plots to the Plaintiffs. He contends that his advocates also unearthed that there were no documentary evidence filed in support of his defence. He pleads that the indolence on the part of his previous advocates should not be visited upon him.
  4. He claims that the amendments sought will provide information that is relevant for the fair and just determination of the real issues in controversy and that they will not change the substratum of the suit nor prejudice the parties herein who shall have an opportunity to respond.
  5. The application is opposed by the Plaintiffs vide the 2<sup>nd</sup> Plaintiff's replying affidavit. He avers that the application is filed late in the day since the suit advanced to the hearing stage without any protest from the 1<sup>st</sup> Defendant, who had the liberty to change representation if he was not satisfied with his previous Counsel. Further, that the 1<sup>st</sup> Defendant has not advanced sufficient reason for failing to comply with Order 11 of the Civil Procedure Rules, before proceedings closed, nor has he shown any exceptional or unforeseen circumstance that would justify the late filing of a witness statement, which if allowed would unfairly prejudice the Plaintiffs, as they would be compelled to review and possibly respond to new evidence that should have been disclosed much earlier.
  6. He also claims that that the 1<sup>st</sup> Defendant's application is irregular and procedurally defective for want of proper instructions under Order 9 of the Civil Procedure Rules. To this end, he claims that the 1<sup>st</sup> Defendant who is an elderly man has not instructed the purported new advocates on record to act



for him pursuant to a tape recording in which the 1<sup>st</sup> Defendant allegedly disclaims having given such instructions. Further, that the Plaintiffs possess additional in-camera video evidence in which the 1<sup>st</sup> Defendant confirms that he did sell the suit properties to the Plaintiffs and expresses his willingness to attend court and testify to that effect.

7. He contends that if the amendments sought are allowed, the entire pleadings will reopen and disrupt the settled status of the proceedings, cause unnecessarily delay and complicate the resolution of the dispute, contrary to the overriding objective of the *Civil Procedure Act* to secure the just, expeditious, proportionate, and affordable resolution of cases.
8. The 2<sup>nd</sup> to 7<sup>th</sup> Defendants did not oppose the application.
9. The application was canvassed by way of written submissions.

### **Submissions**

10. The 1<sup>st</sup> Defendant reiterates that under Order 8 Rule 3 (1) and Rule 5 (1) of the Civil Procedure Rules, this Court has discretion to allow amendment of pleadings at any stage of the suit. Further, that Article 159(2)(d) of *the Constitution* and Sections 1A, 1B and 3A of the *Civil Procedure Act* grants the Court authority to allow the prayers sought and since the hearing of this suit is yet to commence, the amendments sought should be freely allowed as they seek to clarify the primary controversies of sale of the suit properties and issuance of allotment letter to the Plaintiffs, which is the real question in controversy.
11. He submits that he filed the application timeously after finding out that his previous advocates had been indolent, and argues that the said Advocate's inaction should not be meted on him. Further, that Article 50 of *the Constitution* provides for the right to hearing before the Court makes its final decision.
12. On his prayer to file a witness statement out of time, he submits that under Order 50 Rule 6 of the Civil Procure Rules, this Court has discretion to enlarge time for filing of pleadings out of time to file.
13. To buttress his averments, the 1<sup>st</sup> Defendant relied on the following decisions: *Kassam v Bank of Baroda (Kenya) Ltd* (2002) 1 KLR 294, *Phillip Chemwolo & Another v Augustine Kubende* (1986) eKLR, *Baker Ltd v Medway Building and Supplies Ltd* (1958) 3 ALL E.R. 540, *Treeshade Motors Limited V DT Dobie Company* (1998) eKLR and *Institute of Social Accountability & Another v Parliament of Kenya & 3 Others* [2014] eKLR.
14. On their part, the Plaintiffs urge the Court to declare that the 1<sup>st</sup> Defendant's new advocates have no authority/ instructions to act for the 1<sup>st</sup> Defendant thus the instant application is an abuse of court process.
15. They also argue that the discretion of a Court to allow or disallow the amendment of pleadings is superior to the right of a party to amend its pleadings. To this end, they relied on the case of *Andrew Wabuyeke Biketi v Chinese Centre for the Promotion of Investment Development & Trade in Kenya Limited & 2 others* (2015) eKLR.
16. It is also submitted that the amendments are sought late in the day with a purported explanation that seeks to shift blame to the 1<sup>st</sup> Defendant's previous advocates, which explanation the Court is urged to reject. The Plaintiffs also urges the Court to take into consideration that the application for amendment is brought three (3) years after the filing of the Statement of Defence, nine (9) years after commencement of the suit, and a day before the hearing of the suit, thus it is a deliberate effort to further delay this matter.



17. They reiterate that if allowed, the amendments will occasion them grave prejudice as the 1<sup>st</sup> Defendant seeks to introduce issues that are not merely corrective or clarificatory in nature but would fundamentally alter the nature and scope of the dispute by introducing new and extraneous issues, including a fresh claim of trespass allegedly committed by the Plaintiffs on the suit property.
18. They also submit that the 1<sup>st</sup> Defendant has not provided a satisfactory explanation for his failure to file his witness statement within the time prescribed by law thus his omission cannot be excused as an inadvertent error or oversight.
19. To buttress their averments, the Plaintiffs relied on the following decisions: Central Kenya Limited v Trust Bank Limited (2000)2 EA 365, Kyalo v Bayusuf Brothers Limited [1983] eKLR, Kivanga Estates Limited v National Bank of Kenya [2014] eKLR and Jopa Vilas LLC v Overseas Private Investment Corp & 2 others [2014] KECA 232 (KLR).

### **Analysis and Determination**

20. Upon consideration of the instant Chamber Summons application including the respective affidavits and rivalling submissions, the only issue for determination is whether the 1<sup>st</sup> Defendant should be granted leave to amend his statement of defence dated 5<sup>th</sup> December 2022 and to file his witness statement.
21. The 1<sup>st</sup> Defendant seeks leave to amend his statement of defence and to introduce a witness statement and documents after close of pleadings on the basis that his previous advocates failed to file a witness statement on his behalf and that they also failed to respond to the issues raised in the amended Plaint, which include the purported purchase of the suit properties including issuance of allotment letters to the Plaintiffs.
22. In opposition, the Plaintiffs contend that the amendments sought to be introduced will change the cause of action of the suit and that there is no satisfactory explanation regarding the delay in filing the 1<sup>st</sup> Defendant's witness statement, thus it should not be allowed on record.
23. The legal provisions governing amendment of pleadings are contained in section 100 of the *Civil Procedure Act* and Order 8 Rule 3(5) of the Civil Procedure Rules. 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.'
24. 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.'



25. In *Tarmohamed v Mariakani Holdings Limited & another* [2022] KECA 122 (KLR), the Court of Appeal stated that:

“...rules that apply to amendment of pleadings will apply, namely that amendments should be liberally allowed, if they can be made without injustice to the other side, or where such injustice can be compensated by costs.”

26. On leave to file a witness statement, Order 7 Rule 5 of the Civil Procedure Rules provides that a defence shall be accompanied by a list of witnesses to be called at the trial, written statements signed by the witnesses except expert witnesses, and copies of the documents to be relied on at the trial. These rules also provides that witness statements may be furnished at least fifteen (15) days before the trial conference, with leave of the court.

27. The Court however has discretion to allow enlargement of time within which witness statements can be filed under Order 50 of the Civil Procedure Rules and Section 95 of the *Civil Procedure Act*.

28. Order 50 Rule 6 of the Civil Procedure Rules provides as follows:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by Order of the Court, the Court shall have the power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed, provided that the costs of any application to extend such time and any order made thereon shall be borne by the parties making such application, unless the Court orders otherwise.”

29. While Section 95 of the *Civil Procedure Act* stipulates thus:

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”

30. In *Marclus Kiranga Nimrod & another v Nesy Kuthii Justus & another* [2017] KEELC 2067 (KLR), it was observed that:

“It is instructive to note that neither Order 3 nor Order 7 of the Civil Procedure Rules prohibits the trial Court, upon application, from accepting late filing of statements or documents sought to be relied upon. In my view, and in keeping with Article 50 of *the Constitution* which provides for a fair hearing of any dispute, a trial Court is not barred from allowing a party, with leave, to introduce new statements and documents that were not previously filed and served as mandated by the provisions of Order 3 and Order 7 of the Civil Procedure Rules because the primary duty of the Court is to do justice to the parties by allowing them to present all the relevant evidence to support their respective claims. Each case will however be decided on its own peculiar circumstances and among the issues that the Court will take into account before granting such leave may include the reason why the statements and documents were not filed at the right time, the stage of the proceedings and the prejudice that may be caused to the other party. Ideally, where the trial has not commenced or it is at its early stages, no prejudice will be caused to the other party.”



31. 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.”

32. While in the case of *Joseph Ochieng & 2 others Trading as Aquiline Agencies v First National Bank of Chicago* [1995]eKLR the Court of Appeal held as follows:

“.....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 but subject however to powers of court to still allow such an amendment notwithstanding the expiry of current period of Limitation: that the court has powers even (in special circumstances) to allow an amendment adding or substituting a new cause of action if the same arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to seek the amendment.”

33. On perusal of the Court record, I note the matter has not proceeded for hearing. Further, I note the fulcrum of the dispute revolves around ownership of the suit properties by the Plaintiffs. I opine that the amendments sought are not going to substitute a new cause of action as claimed by the Plaintiffs but enable the Court appreciate the facts in respect to the root of the Plaintiffs' title. Further, the Plaintiffs have not demonstrated any prejudice, they will suffer if the amendment sought is granted. To my mind, the Plaintiffs will also be allowed to amend their amended Plaint and since pleadings will reopen, parties can also file further witness statements to support their respective claims.

34. In the foregoing while associating myself with the decisions cited, I will allow the 1<sup>st</sup> Defendant to amend his Statement of Defence and also grant the Plaintiffs and other Defendants leave to amend their respective Defences.

35. In the circumstances, I find the instant Notice of Motion application merited and will allow it.



36. I grant the 1<sup>st</sup> Defendant leave of fourteen (14) days to file and serve the Amended Defence including witness statements. Upon service, I grant the Plaintiffs and the rest of the Defendants' leave of fourteen (14) days to file and Serve their respective amended Pleadings and witness statements if need be.

37. Costs will be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2026**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of:

Ochieng for 1<sup>st</sup> Defendant

Theuri for Ms Ngugi for 3<sup>rd</sup> and 5<sup>th</sup> Defendant

Kasirye for Munene for Plaintiff

Court Assistant: Joan

