



Mohamed v Ocean View Limited & 2 others (Environment and Land Case E057 of 2022) [2026] KEELC 864 (KLR) (19 February 2026) (Ruling)

Neutral citation: [2026] KEELC 864 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE E057 OF 2022**

**JO OLOLA, J
FEBRUARY 19, 2026**

BETWEEN

MOHAMED YUSUF MOHAMED PLAINTIFF

AND

OCEAN VIEW LIMITED 1ST DEFENDANT

NYALI VIEW LIMITED 2ND DEFENDANT

NATIONAL BANK OF KENYA 3RD DEFENDANT

RULING

1. By a Notice of Motion dated 4th July 2025, National Bank of Kenya (the 3rd Defendant) prays for an order that the Court be pleased to strike out the Plaintiff's Amended Plaint dated 15th November 2024.
2. The application is supported by an Affidavit sworn by the 3rd Defendant's Legal Officer Brian Kimetto and is premised on the grounds that:
 - i. The Amended Plaint was filed and served after close of pleadings and without seeking or obtaining leave of the court;
 - ii. The Amended Plaint is procedurally irregular and improper, incurably defective and an abuse of Court process for contravening express requirements under the Civil Procedure Rules as read with Section 19(2) of the *Environment and Land Court Act*;
 - iii. The Amended Plaint purports to introduce new causes of action and materially alters the substance of the original suit as set out in the Plaint dated 24th May 2022 and allowing the same would result in serious prejudice and injustice to the 3rd Defendant;
 - iv. The Plaintiff's failure to obtain leave is not a mere technicality but goes to the root of procedural fairness and the orderly conduct of litigation;



- v. The Amended Plaintiff was done in bad faith with the intention of substantially departing from the claims originally pleaded and altering the nature and scope of this suit by sneaking in new claims without due process; and
 - vi. It is in the interest of justice and for the overarching purpose of fairness that this court grants the orders herein.
3. Mohamed Yusuf Mohamed (the Plaintiff) is opposed to the application. By his Grounds of Opposition dated 23rd September 2025, the Plaintiff opposes the application on the grounds that:
- i. Pleadings have not closed because the 1st and 2nd Defendants have not filed their Statement of Defence.
 - ii. The application is an afterthought since it was filed late in the day and in reaction to the Ruling delivered on 25th April 2025 dismissing the 3rd Defendant's Notice of Preliminary Objection.
 - iii. The Applicant has not met the threshold for granting the orders sought.
 - iv. The orders sought militate against the interest of justice.
 - v. The Applicant has not suffered any prejudice (and the) greater interest of justice demands that the application be dismissed.
 - vi. The Applicant is equally guilty of delay and has filed its documents out of time without leave.
4. I have carefully perused and considered both the application as well as the grounds filed in opposition thereto. I have similarly perused and considered the submissions placed before the Court by the Learned Advocates representing the parties.
5. By its application before the Court, the 3rd Defendant Bank prays for an order that the Plaintiff's Amended Plaintiff dated 15th November 2024 be struck out on account of the fact that the same has been filed late and after the pleadings closed without the leave of the Court. It is the 3rd Defendant's case that the Amended Plaintiff purports to introduce a new cause of action and that allowing the same would result in serious prejudice and injustice to the 3rd Defendant.
6. The power of the Court to strike out pleadings is granted under Order 2 Rule 15(1) of the Civil Procedure Rules which provides as follows:
- “(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—
- a. it discloses no reasonable cause of action or defence in law; or
 - b. it is scandalous, frivolous or vexatious; or
 - c. it may prejudice, embarrass or delay the fair trial of the action; or
 - d. it is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be.”
7. As the Court of Appeal stated in *Blue Shield Insurance Company Ltd –vs- Joseph Mboya Oguttu* (2009) eKLR:
- “The principles guiding the Court when considering such an application which seeks striking out of a pleading are now well settled. Madan J.A. (as he then was) in his judgment in the



case of D.T. Dobie and Company (Kenya) Ltd vs Muchina (1982) KLR 1 discussed the issue at length and although what was before him was an application under Order 6 rule 13 (1) which was seeking striking out of a plaint on grounds that it did not disclose a reasonable cause of action against the defendant, he nonetheless dealt with broad principles which in effect covered all other aspects where striking out a pleading or part of a pleading is sought. It was held in that case inter alia as follows:-

“The power to strike out should be exercised after the Court has considered all facts, but it must not embark on the merits of the case itself as this is solely reserved for the trial Judge. On an application to strike out pleadings, no opinion should be expressed as this would prejudice fair trial and would restrict the freedom of the trial Judge in disposing the case.”

We too would not express our opinion on certain aspects of the matter before us. In that judgment, the learned Judge quoted Dankwerts L.J in the case of Cail Zeiss Stiftung vs Ranjuer & Keeler Ltd and others (No.3) (1970) ChD 506, where the Lord Justice said: -

“The power to strike out any pleading or any part of a pleading under this rule is not mandatory but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending pleading.”

We may add that like Madan J.A, said, the power to strike out a pleading which ends in driving a party from the judgment seat should be used very sparingly and only in cases where the pleading is shown to be clearly untenable.”

8. In the matter herein, the 3rd Defendant did not attack the Plaintiff’s pleadings on the basis that the same disclosed no reasonable cause of action or that they were scandalous, frivolous or vexatious, but it was the 3rd Defendant’s case that the Amended Plaint had been filed without the Court’s leave and after the close of pleadings.
9. As it were, amendment of pleadings is governed by Section 100 of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya which provides as follows:

“ 100. The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”

10. In addition, Order 8 Rule 3 of the Civil Procedure Rules provides as follows regarding amendment of pleadings:

“ 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 sub-rule if it thinks just so to do.

3. An amendment to correct the name of a party may be allowed under sub-rule (2) notwithstanding that it is alleged that the effect of the amendment will be



to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.

4. An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under sub-rule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued.
5. An amendment may be allowed under sub-rule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action 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 suit by the party applying for leave to make the amendment.”

11. Arising from the foregoing, it was clear to me that the Court has a 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. Further, it is well settled that amendments should be freely allowed if they will not prejudice or cause injustice to the opposite party which cannot be compensated with costs or other terms to be imposed by the Court.
12. Looking at the circumstances herein, I was not persuaded that in a matter such as this where the trial is yet to commence, the amendments made to the Plaint could be said to be prejudicial and/or cause an injustice to the 3rd Defendant. It was clear from my reading of the Plaint as amended that all the facts alluded to relate to the same facts that the Plaintiff had made reference to before the amendment.
13. It was also clear that since the matter is yet to be set down for trial, all the Defendants would get an opportunity to respond to the same through their pleadings and to test the veracity therefore at the trial.
14. It follows that I did not find any merit in the Motion dated 4th July 2025. The same is dismissed with no order as to costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 19TH DAY OF FEBRUARY, 2026

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J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Makadina holding brief for Mr. Kilonzo Advocate for the Plaintiff/Respondent

Mr. Abuoga holding brief for Mr. Omwenga Advocate for the 1st and 2nd Defendants

M/s. Ogonyo holding brief for Mr. Mogere Advocate for the 3rd Defendant/Applicant

