



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC CASE NO E205 OF 2023

**ELIZABETH KABURA MWINDI (Suing as the Administrator
of the Estate of I. N.O.H. MACHUA MBIRIRI**

Alias HYLAM MACHUA).....
PLAINTIFF/APPLICANT

VERSUS

PAULINA KIBUI GAKAMI,,,,,,,,,,,,,,,,,,,,,,,,,,,,,1ST
DEFENDANT/RESPONDENT

**TRUSTEES OF FULL GOSPEL
CHURCHES OF KENYA.....2ND**
DEFENDANT/RESPONDENT

RULING

1. By a Notice of Motion dated 21st July, 2025, brought under Order 8, Rules 3(1), (2), and (5), and Order 1, Rules 10(2) and (14), of the Civil Procedure Rules, and under Sections 1A, 1B, and 3A of the Civil Procedure Act, the Plaintiff/Applicant seeks the following orders:

***a) THAT leave be granted to the
Plaintiff/Applicant to amend the Plaintiff.***

b) THAT the draft amended Plaintiff annexed to the application be deemed as duly filed upon payment of the requisite court fees.

c) THAT this court be pleased to add NICHOLAS MBIRIRI KANG'ETHE, MICAH NGENDO MACHUA, and LUCY WANJIKU KAIRU as additional Plaintiffs in this suit.

d) THAT the costs of this application be provided for.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Elizabeth Kabura Mwindi, sworn on even date

THE APPLICANTS CASE

3. The deponent averred that the proposed amendment is intended to determine the real question in controversy. She further averred that the inclusion of Nicholas Mbiriri Kangéthe, Milcah Ngéndo Machua, and Lucy Wanjiku Kairu is necessary because they were appointed administrators of the deceased's estate under the rectified grant dated 4th February 2025.

THE RESPONDENT'S CASE

4. Though duly served, the Respondents did not file any response to the application.
5. The application was canvassed by way of written submissions.
6. The Applicant filed her submissions dated 24th November 2025, which I have duly considered.

ANALYSIS AND DETERMINATION

7. Having considered the application and the Applicant's submissions, the following issues arise for determination:
 - a) *Whether the Plaintiff should be granted leave to amend the Plaintiff; and*
 - b) *Whether the joinder is merited.*
8. Section 100 of the Civil Procedure Act provides for the general power to amend and grants the Court discretion to allow or deny an amendment.
9. 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.”
10. The law governing leave to amend pleadings is well established. The general rule is that amendments of pleadings sought before the hearing should be freely allowed if they can be made without causing injustice to the other side, and if any harm can be compensated by costs. The main principle is that an amendment should not be allowed if it causes injustice to the opposing party.
11. In **Ochieng and Others v. First National Bank of Chicago, Civil Appeal No. 147 of 1991**, the Court of Appeal outlined

the principles that guide courts in granting leave to amend pleadings, stating:

a) The power of the court to allow amendment is intended to determine the true substantive merits of the case.

b) The amendments should be timeously applied for.

c) Power to amend can be exercised by the court at any stage of the proceedings.

d) 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 be compensated to the other side.

e) 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 reply on the Limitations Act, subject, however, to the powers of the court to still allow an amendment notwithstanding the expiry of the current period of limitation.

12. The Court has inherent power under Section 3A of the Civil Procedure Act to allow a party to amend its pleadings at any stage before judgment. The overriding considerations in an application for leave to amend are whether the proposed amendment is necessary to determine the real question in controversy and whether it would prejudice the opposing party.

13. In the matter at hand, the proposed amendment seeks to add new Plaintiffs to the case and to specify the Defendants' acts of illegality, trespass, and contempt of court.
14. The amendment sought does not change the character of the suit or introduce a new cause of action.
15. This matter has not yet proceeded to hearing. The Defendants have not demonstrated the specific prejudice, if any, they may suffer if the amendment is allowed, nor have they established that they will not be adequately compensated if the amendment is allowed at this stage. The Defendants will not be prejudiced, as they will have an opportunity to respond to the amendment.
16. Regarding the second issue, the Applicant seeks to join the proposed Plaintiffs on the basis that they have been included as administrators of the deceased's estate pursuant to the rectified grant.
17. The law governing joinder of parties is grounded in Order 1 Rule 10(2) of the Civil Procedure Rules, which provides as follows;

“The Court may at any stage of the proceedings, either upon, or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant or whose

presence before the court may be necessary in order to enable the court to effectually and completely to adjudicate upon or settle all questions involved in the suit, be added."

18. The Applicant produced a certificate of rectification of the grant to substantiate her claims.
19. The joinder of parties will not prejudice the Defendants in any way. This court finds that joinder of the proposed Plaintiffs is necessary for the effective resolution of this dispute.
20. The upshot of the foregoing is that the Application dated 21st July 2025 is merited and is hereby allowed in the following terms:-

- a) Leave is granted to the Plaintiff to amend the Plaintiff in terms of the annexed draft amended Plaint.***
- b) The amended Plaint shall be filed and served within 14 days from the date hereof.***
- c) That Defendant is granted leave to file and serve an amended defence within 14 days after service.***
- d) The proposed parties are joined to the proceedings as Plaintiffs.***
- e) That the Applicant shall meet the cost of this application.***

**RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT
TEAMS THIS 6TH DAY OF FEBRUARY, 2026.**

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**HON. T. MURIGI
JUDGE**

IN THE PRESENCE OF: -

Muiruri holding brief for Onyango for the Defendants

Ahmed - Court Assistant

ORIGINAL