



Venture Holdings Limited v Kibuka (For the Estate of Grace Wanjiru Koni) (Environment and Land Case 88 of 2019) [2026] KEELC 652 (KLR) (12 February 2026) (Ruling)

Neutral citation: [2026] KEELC 652 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 88 OF 2019
CG MBOGO, J
FEBRUARY 12, 2026**

BETWEEN

VENTURE HOLDINGS LIMITED PLAINTIFF

AND

FREDRICK KIBUKA (FOR THE ESTATE OF GRACE WANJIRU KONI) DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated 19th September, 2025 filed by the plaintiff/applicant, and it is expressed to be brought under Order 8 Rules 3 and 5 and Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B, 3A and 95 of the *Civil Procedure Act* and Section 19 of the *Environment and Land Court Act* seeking the following orders:-
 1. Spent.
 2. That this honourable court be pleased to grant the plaintiff leave to further amend its amended plaint dated 4th August, 2016 in the terms of the draft further amended plaint annexed hereto.
 3. That upon grant of leave, the annexed further amended plaint be deemed as duly filed and served upon payment of the requisite court fees.
 4. That the costs of this application be in the cause.
2. The application is premised on the grounds on its face. It is further supported by the affidavit of Kwame Kariuki, the director of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that the proposed further amendments are necessary not only to introduce material developments, but also to regularize the record in accordance with Order 24 of the Civil Procedure Rules. Further, that owing to the determination in ELC Misc No. 4 of 2016(OS), the plaintiff/applicant seeks leave to amend and include prayers seeking special damages, general damages and declaratory reliefs.



3. The plaintiff/applicant deposed that the amendments are necessary for the complete and just adjudication of the issues in controversy, and that they are not an introduction of any new cause of action inconsistent with the original pleadings.
4. The defendant/respondent opposed the application vide his replying affidavit sworn on 14th October, 2025. He deposed that the proposed amendments seek to introduce new and distinct causes of action including indemnity, contribution, special damages, business loss and reputational harm which are foreign to the original claim. It was further deposed that such amendments if allowed would alter the character and nature of the suit contrary to the provisions of Order 8 Rule 3 (5) of the Civil Procedure Rules.
5. The defendant/respondent further deposed that there are no new facts or events warranting amendments since the last amendment, and allowing the same would gravely prejudice him as it would expand the scope of the dispute to include matters outside the jurisdiction and original pleadings such as third party and tenancy issues. Further, it is falsely misleading to claim that he was not formally substituted as the legal representative of the deceased since there is on record a limited grant ad litem.
6. The defendant/respondent deposed that the application is res judicata as the issues of indemnity and contribution were directly and substantially in issue between the parties in ELC Misc Appl No. 4 of 2016(OS) which was heard and determined with finality. Further, the application is belated having been brought eight years since the last amendment, thus offending the principles of finality and expeditious disposal of cases.
7. In response thereto, the plaintiff/applicant filed the supplementary affidavit sworn on 6th November, 2025 and reiterated the contents of its supporting affidavit. Further, it was deposed that the proposed amendments are made in good faith pursuant to this court directions issued on 2nd July, 2025 inviting the parties to file any additional documents prior to hearing of the suit.
8. The defendant/respondent also filed the notice of preliminary objection dated 14th October, 2025 challenging the instant application on the following grounds:-
 1. That the application seeks to introduce new and distinct causes of action, including claims for indemnity, contribution, special damages, business loss, reputational damage issues relating to tenants and third parties which fundamentally alter the nature and character of the original suit for specific performance and breach of contract, contrary to Order 8 Rule 3 (5) of the Civil Procedure Rules and established principles governing amendment of pleadings.
 2. That the intended amendments are veiled attempts to reopen and relitigate issues already determined in ELC Misc Application No. 4 of 2016 (OS) and the consolidated matters and are therefore res judicata, offending Section 7 of the *Civil Procedure Act*.
 3. That the said amendments seek to impose contractual and tortious liability on the estate of the late Grace Wanjiru Koni who was not a party to the sale agreements between the plaintiff and the alleged purchasers of the apartments, and therefore no privity of contract exists between the late Grace Wanjiru Koni and the purported purchasers of the apartments unlawfully erected on the suit property by the plaintiff/ applicant.
 4. That the application is belated, having been brought more than eight (8) years after the last amendment, and a few weeks before trial thereby offending the principles of finality and expeditious disposal of suits under Sections 1A and 1B of the *Civil Procedure Act*.



5. That the application is incompetent, misconceived and an abuse of the process of this honourable court. On several occasions when the matter came up for hearing, the plaintiff/applicant failed to present its witnesses eventually on October 22, 2024 when the plaintiff/applicant failed to appear yet again the court closed the plaintiffs/applicants case for non-attendance and proceeded with the defendant's/respondent's counterclaim. Thereafter, the plaintiff/applicant moved the court to reopen its case, which the court reluctantly allowed on May 22, 2025 and imposed a fine of Kshs.300,000/-. The matter was subsequently mentioned on July 2, 2025 when the court fixed the matter for hearing on November 18, 2025 and allowed the parties to file any documents necessary within the specified period. However, in a bid to further delay the matter, the plaintiff/applicant has now brought the application in the very last minute in violation of Article 50 and 159 (2) of *the Constitution* of Kenya which guarantee the right to a fair hearing and prohibit the delay of justice.
9. In response thereto, the plaintiff/applicant filed grounds of opposition dated 6th November, 2025 in opposition to the preliminary objection on the following grounds:-
 1. The objection fails to meet the legal threshold under Mukisa Biscuit as it raises issues of fact and discretion rather than pure points of law.
 2. The proposed amendments arise from the sale agreement and continuing breach and do not introduce new causes of action.
 3. Re judicata does not apply, the parties and reliefs in ELC Misc 4/2016 (OS) differ from those in this suit.
 4. The question of privity and indemnity are matters of fact and law requiring evidence not proper for determination by preliminary objection.
 5. The application is properly before court pursuant to directions of 2 July, 2025 and without the court's discretion under Order 8 Rule 3 and Section 95 of the *Civil Procedure Act*.
 6. The objection is frivolous, vexatious and a deliberate attempt to delay the hearing of the substantive application.
10. The application was canvassed through written submissions. The plaintiff/applicant filed its written submissions dated 6th November, 2025. The defendant/respondent filed his written submissions dated 20th November, 2025.
11. It would be mindful to note that the preliminary objection raises similar issues as contained in the defendant/respondent's replying affidavit. I find no need to delve into the same, and thus the determination of the instant application would obviously apply to the preliminary objection as well.
12. I have considered the application, the replies thereof and the written submissions filed by both parties. The issue for determination is whether this court ought to exercise its discretion to allow for further amendment of the amended plaint.
13. Section 100 of the *Civil Procedure Act*, provides as follows:-

“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”.



14. Order 8, Rules 3 and 5 of the Civil Procedure Rules, provides as follows:-

- “(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.
- (3)
- (4)
- (5) An amendment may be allowed under subrule (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.”

15. Further, Order 8, Rule 5 of the Civil Procedure Rules provides:-

- “(1) For the purpose 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.
- (2) This rule shall not have effect in relation to a judgment or order.”

16. My reading of the above provisions shows that indeed an amendment may be allowed at any time of the suit. The court however has discretion to either allow or deny the amendment hence the need to seek leave. In making this decision, the court needs to look at all circumstances of the matter. If the amendment will greatly prejudice the other party so as to lead to an injustice, then the amendment may be disallowed. But if no injustice is going to be caused to the other party, the court may allow the amendment with necessary directions. Having said that, it is preferable that applications to amend come early in the proceedings. Late amendments are more likely to cause injustice as compared to an amendment coming before the hearing of the suit commences.

17. In the instant case, the plaintiff/applicant contends that the proposed amendments are necessary for the just, fair and effectual determination of all the issues in controversy. The said proposed amendments are said to be anchored on two reasons mainly: that the defendant was not formally substituted as a defendant and the legal representative for the estate of Grace Wanjiru Koni and that there are material developments following the determination in ELC Misc. Appl no. 4 of 2016(OS).

18. On the other hand, the defendant/respondent vehemently opposed the instant application for the reasons that the same is an abuse of the court process having been made after 8 years since the last amendment, and just prior to the hearing of the suit. Moreso, the defendant/respondent argued that the application is res judicata as the issues of indemnity and contribution were determined in the said



miscellaneous application and thus allowing such amendment would expand the scope of the original suit thus it is prejudicial.

19. The principle upon which the court exercises the discretion to allow amendment was summarized by the Eastern African Court of Appeal in the Case of Eastern Bakery v Castellino [1958] EA 461. The object and rationale behind this principle was outlined by the High Court in the case of Institute for Social Accountability and Another versus Parliament of Kenya and 3 others (2014) eKLR as follows:-

“The issue of amendment of pleadings is not novel and has been the subject of numerous court decisions, the common denominator being that as a general principle, courts will normally allow amendment of pleadings at any stage of the proceedings if it can be done without occasioning injustice or prejudice to the other party and which prejudice can be compensated by an award of costs. See generally Eastern Bakery v Castelino (1958) EA 461; Ochieng and others v First National Bank of Chicago CA Civil Appeal Number 149 of 1991, Kenyatta National Hospital v Kenya Commercial Bank Limited & Another [2003] 2EA.

The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings.”

20. I have perused the said draft further amended plaint, and it is clear that the plaintiff/applicant has through the prayers, sought to introduce new causes of action that were not contained in the original suit and the amended plaint. More importantly, and as I note, the said amendments sought will fundamentally alter the character of the suit, and there would be need for further amendment of the defence and counterclaim by the defendant/respondent. The plaintiff/applicant argued that there are material developments that supports the need for amendment following the determination in ELC Misc No. 4 of 2016(OS). It is critical to note that this judgment was delivered on 21st September, 2023. It has not been demonstrated that the plaintiff/applicant became aware of this judgment recently. It thus raises doubt why the plaintiff/applicant would seek to amend the amended plaint more than two years after judgment was delivered in this matter.
21. Equally so, the fact that the defendant is the legal representative of the late Grace Wanjiru Koni is an issue which the court takes judicial notice and such amendment infact ought to be brought by the said defendant. Also, in allowing the parties to file any additional documents following the ruling delivered on 22nd May, 2025 the same orders did not provide a leeway for seeking any amendments.
22. In my view, the plaintiff/applicant is indeed engaging in delaying tactics to frustrate the hearing of this case, and there is absolutely no sufficient reason that has been demonstrated that would persuade this court to exercise its discretion and allow the plaintiff/applicant to further amend the amended plaint.
23. From the above, I find the notice of motion dated 19th September, 2025 an abuse of the court process, and the same is hereby dismissed with costs to the defendant/respondent.

It is so ordered.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 12TH DAY OF FEBRUARY, 2026.

HON. MBOGO C.G.



JUDGE

12/02/2026.

In the presence of:

Ms. Benson Arunga - Court assistant

Mr. Morara Omoke for the Defendant

Ms. Kado holding brief for Mr. Kounah for the Plaintiff

