

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC CIVIL SUIT NO 2313 OF 1992**

**ELIZABETH NGENDO NJENGA**

**(Suing by her Lawful attorney HEZRON NJENGA) .....1<sup>st</sup> PLAINTIFF**

**EDMUND KWEHERIA GICHUHI.....2<sup>nd</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**NGANGA K. G. MUREU KINYANJUI.....1<sup>st</sup> DEF/ RESPONDENT**

**GITAU KIRUMBA JOHN MUHORO.....2<sup>nd</sup> DEF/RESPONDENT**

**KIARIE M. KINYUA NG'ANG'A.....3<sup>rd</sup> DEF/RESPONDENT**

**DAGORETTI SLAUGHTER HOUSE LTD.....4<sup>th</sup> DEF/RESPONDENT**

**RULING**

1. Vide a Notice of Motion dated the 27<sup>th</sup> October, 2025 brought pursuant to the provisions of **Section 3A** of the **Civil procedure Act, Order 1 Rules 3, 10(2), (4), Order 8 Rules 3, 5 and 8** and **Order 50 Rule 6** of the **Civil Procedure Rules**, the 2<sup>nd</sup> Plaintiff/Applicant seeks the following reliefs:

- i. Spent**
- ii. Spent**

**iii. Spent**

**iv. THAT leave be granted to the applicant to amend the further amended Plaintiff further herein.**

**v. THAT the further, further amended plaintiff annexed herein be deemed as duly filed and served.**

**vi. THAT the cost of this application be provided for.**

2. The Application is supported by the affidavit of Advocate Lawrence Nyoro Njogu, on record for the 2<sup>nd</sup> Plaintiff/Applicant and duly authorised to swear the affidavit.
3. Mr Njogu deponed that the cause of action here emanates from illegal and irregular trespass over the parcels of land belonging to the 1<sup>st</sup> and the 2<sup>nd</sup> Plaintiffs by the Defendants. The subsequent further amendment to the Plaintiff herein will enable this court to completely and effectually determine all the issues in this matter. He averred that he is aware that amendments to pleadings may be made at any time before judgment
4. In response to the Motion, Ms Anne Gathirwa, an Advocate in the conduct of the matter on behalf of the Defendants, swore a replying affidavit on the 3<sup>rd</sup> December, 2025. She deponed that the prayers sought are misconceived and constitute an afterthought intended to further delay proceedings in an inordinately protracted dispute, spanning approximately thirty-two (32)

years. She added that the matter had, in fact, been determined on 30<sup>th</sup> November 2004, but was subsequently reopened for further litigation.

5. Further, she explained that this is the Plaintiff's third attempt to amend the Plaintiff, the most recent being on 11<sup>th</sup> July 2023. She stated that the parties have formally closed their respective cases, the matter is ripe for judgment, and it would be highly prejudicial to grant the Motion.
6. Vide a further affidavit dated 5<sup>th</sup> January 2026, Advocate Lawrence Nyoro Njogu reiterated that the proposed further amendment is necessary to enable the court to effectually and completely determine all the issues in controversy, including the reliefs sought.
7. He maintained that the 2<sup>nd</sup> Plaintiff/Applicant has no intention of delaying the matter and deposed that, when the court file went missing for a considerable period, it was the 2<sup>nd</sup> Plaintiff/Applicant who took the initiative to trace it. He further pointed out that although judgment had been entered in 2004, it was the Defendants who subsequently reopened the suit through an application for review and setting aside.
8. He deposed that the Defendants have yet to file their submissions in the main suit and would therefore have adequate opportunity to respond to the further amended plaintiff, including filing an amended defence if necessary, which he asserted could reasonably be done within fourteen (14) days.

9. Mr Njogu deponed that the proposed amendment would not occasion any prejudice, maintaining that it neither alters the nature nor the character of the suit, nor amounts to an attempt to re-open the case, but merely seeks to clarify and properly present the issues for determination.

### **SUBMISSIONS**

10. The 2<sup>nd</sup> Plaintiff/Applicant filed written submissions on the 5<sup>th</sup> January 2026.

Counsel submitted that the Defendants' replying affidavit, sworn on 3rd December 2025, was filed and served outside the timelines directed by the court without leave, and ought therefore to be struck out and expunged from the record. It was argued that, absent a properly filed response, the application remains unopposed and should be allowed as prayed.

11. On the merits, Counsel contended that the application satisfies the threshold under **Order 8 Rule 3** of the **Civil Procedure Rules**, which empowers the court to permit amendments at any stage of proceedings on just terms. It was submitted that the intended amendment is bona fide, does not introduce a new cause of action or alter the character of the suit, and merely clarifies the reliefs sought to enable the court to effectually and completely determine all issues in controversy. No prejudice will be occasioned to the Defendants as they retain liberty to amend their defence and respond within reasonable timelines.

12. In support of the foregoing position, reliance was placed on **Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited [2013] eKLR**, and **St. Patrick's Hill School Limited v Bank of Africa Kenya Limited, High Court Civil Case No. 7 of 2017 (Kajiado)**, for the proposition that amendments should be freely allowed where they are necessary for the just determination of the dispute. Counsel urged the court to allow the application with costs.

13. The Defendants filed their submissions on 3<sup>rd</sup> December 2025, contending that the present Motion, having been brought after the close of the evidential phase, offends the principles of finality and expeditious disposal of suits by occasioning undue delay and inefficiency.

14. Counsel argued that the proposed amendments are not merely cosmetic or clarificatory in nature, but seek to introduce substantive and distinct heads of damages, specifically claims for mesne profits and compensatory damages. Such reliefs, it was urged, require a proper factual foundation and evidentiary proof, which would inevitably necessitate the reopening of the suit. In counsel's view, allowing the amendments at this stage would render the concluded trial nugatory and substantially prejudice the Defendants

#### **ANALYSIS & DETERMINATION**

15. Having analyzed the pleadings and submissions by the parties, the sole issue for determination is:

**Whether the 2<sup>nd</sup> Plaintiff/Applicant's plea for amendment is merited?**

16. The general power of the court to amend pleadings is drawn from **Section 100** of the **Civil Procedure Act, Cap 21**, which 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.”**

17. Further guidance is found in **Order 8 Rule 3(1), (2) and (5)** of the **Civil Procedure Rules, 2010**, which provides:

**“(3) (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.”**

**(3)(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(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.”**

18. Whereas **Order 8 Rule 5(1)** provides:

**“For the purpose of determining the real question in controversy between the parties, or correcting any defect or error in any proceedings, the court may either on 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.”**

19. The principles upon which a court acts in an application to amend pleadings were set out by the Court of Appeal in **Central Kenya Limited v Trust Bank Limited (2000) eKLR**, which referred to commentaries on the **Indian Civil Procedure Code** by **Chittaley and Rao**, where the Learned Authors stated as follows:

“The settled rule with regard to amendment of pleadings has been concisely stated in Vol.2, 6th Ed. at P.2245, of the AIR Commentaries on the Indian Civil Procedure Code by Chittaley and Rao, in which the learned authors state: A party is allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.”

20. More recently, the Court of Appeal in **Coffee Board of Kenya v Thika Coffee Mills Limited & 2 Others [2014] KECA 409 (KLR)** reiterated that amendments should generally be allowed where they are necessary for the determination of the real issues in controversy between the parties.

21. The court, however, underscored that such discretion is not without limits.

An amendment should not substitute or fundamentally alter the original cause of action, nor introduce inconsistent or mutually destructive allegations that negate admitted facts. Further, no amendment should occasion prejudice to the opposite party that cannot be compensated by costs, nor defeat accrued legal rights, particularly where a claim is barred by limitation.

22. The appellate court further emphasized that procedural technicalities should not hinder substantive justice, and genuine errors or mistakes that are not fraudulent should not, without more, be a basis for rejection. Nonetheless, any delay in seeking an amendment must be satisfactorily explained and, where appropriate, compensated by costs. The overarching consideration remains whether the amendment serves the ends of justice without occasioning injustice to the other party.

23. It is apparent that the courts' discretion to amend pleadings at any stage of the proceedings is wide and unfettered except that it should be exercised judicially and upon the defined principles to bring out the real issues in controversy between the parties and on such terms as to costs as may be just.

24. By way of background, the Plaintiffs instituted this suit seeking eviction orders, a permanent injunction and general damages arising from alleged

trespass onto L.R. No. Dagoretti/Thogoto/968 and L.R. No. Dagoretti/Thogoto/969. Their case has consistently been that the Defendants willfully and without lawful cause extended the boundary of their parcel and thereby encroached upon the Plaintiffs' land, continuing in such unlawful occupation despite notice to desist.

25. By the present Motion, the Plaintiffs seek to amend the plaint further to introduce declaratory reliefs affirming the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs as the lawful owners of the respective parcels, orders for possession, a permanent injunction restraining the Defendants from any interference, mesne profits at Kshs. 50,000/= per month for each Plaintiff during the alleged period of illegal occupation, and compensatory damages together with interest.

26. As has been demonstrated by the jurisprudence, although amendments may be allowed at any stage of proceedings, the court's discretion is exercised cautiously where the matter has progressed to an advanced stage.

27. In the present case, the hearing has closed, and the matter stands ready for judgment. Notably, no satisfactory explanation has been offered as to what has necessitated the proposed amendment at this late juncture. The absence of any credible justification renders the application an afterthought, and this

court cannot countenance attempts that undermine the orderly progression and finality of litigation.

28. The proposed amendments are far from cosmetic. They introduce substantive additional reliefs, including claims for mesne profits and compensatory damages, which would require a fresh evidentiary foundation and proof. Granting such leave would inevitably reopen the record, prolong a dispute that has already endured for decades, and prejudice the Defendants in a manner not compensable by costs alone. The guiding authorities are clear that amendments should not defeat accrued rights or occasion injustice.

29. In the circumstances, this court is not persuaded that the proposed amendment is necessary for the just determination of the real issues in controversy. Consequently, the Motion dated the 27<sup>th</sup> October, 2025, is found to be unmerited and is hereby dismissed with costs in the cause.

**Dated, Signed and Delivered at Kisii virtually/CTS this 26<sup>th</sup> of February, 2026**

**A. OMOLLO**  
**JUDGE**