



**Seset & 2 others (Suing as the legal representatives of the Estate of  
Chebor Kiprop Kalikwon) v Psinen (Environment and Land Case  
E025 of 2024) [2026] KEELC 1018 (KLR) (25 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1018 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND CASE E025 OF 2024  
CK NZILI, J  
FEBRUARY 25, 2026**

**BETWEEN**

**JOSEPH KIROR SESET ..... 1<sup>ST</sup> PLAINTIFF  
BEATRICE CHELANGAT TUKEI ..... 2<sup>ND</sup> PLAINTIFF  
LAVIN CHEROTICH ..... 3<sup>RD</sup> PLAINTIFF  
SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF CHEBOR  
KIPROP KALIKWON**

**AND**

**AUGUSTINE KOTORUK PSINEN ..... DEFENDANT**

**RULING**

1. By an application dated 1/12/2025, the defendant, as the applicant, seeks leave to amend the defence, the matter to begin afresh, or, in the alternative, the plaintiff's/respondents' witnesses be recalled for cross-examination. The reasons given in the supporting affidavit, sworn on 1/12/2025 by Augustine Psinen, are that he had a miscommunication with his former advocate on record, hence the change of legal representation, which law firm has now advised him on the need to amend the defence as per the annexed draft notice of change of advocates attached as "A" and "B".
2. The applicant states that the mistakes of counsel should not be visited upon him, especially after discovering that the respondents had also amended the reply to the defence and defence to the counterclaim, through an application dated 30/10/2025. The applicant states that the amendment will bring all the real issues to the fore for determination, and there will be no prejudice occasioned to the opposite party, who will have an occasion to cross-examine him and the witnesses.



3. The plaintiffs have opposed the application vide a replying affidavit sworn by Joseph Kiror on 11/12/2025. They depose that the application is misconceived, an abuse of the court process, and is intended to defeat the ends of justice.
4. The respondents depose that in the proposed amendment, the applicant is seeking to abandon the entire claim on adverse possession and introduce a new claim on trust. It is deposed that the applicant is seeking to introduce a new cause of action after the close of the plaintiffs' case.
5. Further, the respondents depose that a claim on trust was not pleaded in the defence and counterclaim dated 23/7/2024, which the applicants seek to amend.
6. The respondents state that their key witness, Veronica Chesiko, has since passed on, yet she testified on possession, occupation, family relations, and violence; thus, the respondents stand to suffer grave prejudice if the matter begins de novo.
7. The respondents depose that the applicant has now changed his strategy, since his claim on adverse possession was found untenable in Kitale ELC No. 54 of 2016- Suson Cherop (Administrator of the Estate of the Late Lomaria Kotoruk alias Plimo Kotoruk- (Deceased) -vs- Augustine Psisen.
8. The deponent prays to have the matter concluded due to his advanced age and the fact that the applicants have not demonstrated exceptional circumstances to warrant a trial de novo, and that litigation must come to an end. A copy of his identification card is marked JKS-01.
9. The respondents state that the suit land was adjudicated and registered in the name of Chebor Kirop Kilikwon, who was in possession until he passed on. The applicants have now reengineered their weak case, which shall be prejudicial to the respondents.
10. The applicant relies on written submissions dated 15/12/2024. He submits that he seeks to amend his defence and counterclaim, to introduce further witness statements, recall respondents' witnesses, or have the matter start afresh.
11. The applicant submits that his counsel on record has found that the facts of his case support a claim on trust, rather than adverse possession, hence necessitating this application.
12. The applicant relies on Order 8, Rules 3 and 5 of the Civil Procedure Rules, on the power of the court to allow amendments. The applicant submits that the respondents have failed to substantiate the prejudice they stand to suffer, which could be compensated by way of costs.
13. The applicant submits that the amendments are necessary to enable the court determine the real questions in controversy, or to correct defects or errors in proceedings. Reliance is placed on Coffee Board of Kenya -vs- Thika Coffee Mills Limited & 2 others [2014] KECA 409 (KLR).
14. Order 8 Rule 5 of the Civil Procedure Rules provides that a court may allow an amendment for purposes of determining the real questions in controversy. The general rule is that courts will ordinarily allow for amendment of pleadings, unless it will cause an injustice or prejudice to the other party. The discretion to allow for amendments is to be exercised on sound principles and reasons.
15. In Sadera & 2 others -vs Kerema & 7 others (Civil Appeal 89 of 2019) [2025] KECA 458 (KLR) (7 March 2025) (Judgment), an application for an amendment was being opposed for being mischievous, made in bad faith, and intended to cure an otherwise bad case. Kullow J dismissed the application, since the suit had been heard substantively, and if the amendments sought were allowed, it meant that the case would start afresh with new facts and issues of law.



16. On appeal, the Court of Appeal said that the basic object of Order 8 Rule 5 of the Civil Procedure Rules is that the court should try the merits of the cases that come before it. Further, the court held that all amendments that may be necessary to determine the real questions in controversy between the parties should be allowed, provided they do not cause injustice or prejudice to the other side.
17. On delay in filing the application, the court said that Order 8 Rule 3(1) and Order 1 Rules 9, 10, and 24, Rules 3, 4, 5, and 6 of the Civil Procedure Rules provide that a court may at any stage of the proceedings, on such terms as to costs or otherwise, as may be just and in such a manner as it may direct, allow any party to amend his pleadings.
18. The court said that the drafters of the Rules were conscious of the fact that amendments of pleadings may alter the cause of action. The court said that so long as the cause of action arises out of the same facts or substantially the same facts as those already pleaded in the plaint sought to be amended, an application for amendment will be allowed.
19. The court said that courts should adopt a liberal approach in determining such an application for amendment, unless significant prejudice would result to the opposing party, even if the amendment is sought at a late stage, provided it is done in good faith.
20. The court said that courts lean towards granting leave to amend, unless it is made mala fide, or would cause prejudice to the other party, which cannot be compensated by way of costs or other suitable order, such as postponement. The court held that amendments should be refused only where the other party cannot be placed in the same position as if the pleadings had been originally correct.
21. The court said that the phrase at any stage of proceedings postulates that an amendment can be permitted at any stage of the proceedings, from the initial filing of the suit to its conclusion.
22. In *Lekakeny -vs- Katere & Others Civil Appeal Appl. No. E104 of 2023 [2024] KECA 128 [KLR]*, the court said that the discretion to allow for an amendment is to be exercised judiciously and upon reasons, rather than arbitrarily on humour or fancy.
23. In *John Mugambi & Mugambi & Co. Advocates -vs- Kiama Wangai [2021] eKLR*, the court said that the factors to consider include whether the application has been brought in good faith, considering its timing, the conduct of the applicant, whether there has been undue delay in bringing the application, whether the amendment will cause an injustice or prejudice to the respondent, whether it will unfairly redefine the dispute and whether the amendment will be futile or superfluous.
24. The court held that where the effect of the amendment would prejudice or adversely affect the rights or vested interests of the opposing side, which have already accrued, the amendment should be disallowed.
25. Applying the foregoing case law, this suit is at the defence stage. The plaintiffs' case was closed on 18/9/2025. On 22/10/2025, the defendant applied for an adjournment after the matter was given a time allocation of 10:00 a.m. The reason was that the defendant had reportedly been admitted to the hospital that morning. Costs were ordered to be paid. Another defence hearing date was given for 2/12/2025.
26. The plaintiffs filed an application dated 30/10/2025 seeking to amend the reply to the defence and defence to the counterclaim. The court declined to allow the application. Miss Isiaho, who had just come on record for the defendant, sought another date, for she had just been instructed and had filed the instant application.
27. Learned counsel for the plaintiffs, Mr. Magal, opposed the request for adjournment for the third time based on the application being filed too late. Learned counsel said that the defendant is on the suit



land, and therefore any delay in the matter was in his favour. Learned counsel urged the court to order that the defence hearing proceed. The court allowed for an adjournment with costs to the plaintiffs.

28. The court has carefully looked at the proposed amended defence and counterclaim. It seeks to significantly alter the substance of the existing defence and counterclaim by introducing new facts in paragraphs 26A, 26B, 26C, 26D, 26E, 26F, 26G, 26H, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, and new prayers, (a), (b), (c), (d), (e), (f), and (g).
29. All these facts were within the knowledge of the defendant, but were not captured in his former pleadings, and the witness statements dated 23/1/2024. Therefore, it cannot be true that the mistake was made by the former lawyer on record. See *Belinda Murai & Others -vs- Amos Wainaina* [1979] eKLR.
30. The court notes that five witnesses for the plaintiffs have already testified, and closed their case. Amendments sought after evidence has been adduced amount to abuse of the court process. See *Graham Rioba Sagwe & Others -vs- Fina Bank (K) Ltd & Others* [2017] eKLR. It cannot be true that the defendant is seeking to clarify the issues, but is out to bring new facts. See *Coffee Board of (K) -vs- Thika Mills Ltd* (supra).
31. In *Joseph Ochieng & Others T/A Aquiline Agencies -vs- First National Bank of Chicago* [1995] eKLR, the court said that if a court is not satisfied as to the truth and substance of the proposed amendment, it ought to disallow the proposed amendment. The court said that an amendment is granted as a matter of discretion, led by the court's assessment of where justice lies. The right to amend is not absolute. It depends on the discretion of the court.
32. In *Central (K) Ltd -vs- Trust Bank Ltd & Another* [2004] eKLR, the court said that a party is allowed to amend to avoid multiplicity of suits provided there is no undue delay, no new or inconsistent cause of action is introduced, no accrued or vested right is affected, and there will be no injustice to the other side.
33. The court has looked at the issues raised in the draft pleadings and what the defendant's then advocate then on record cross-examined PW1, 2, 3, 4, and 5 on. Whereas the law gives the court powers to allow for amendments of pleadings, the party applying must satisfy the court that the application is made in good faith, and is not intended for filling gaps in their case.
34. The application is only coming after the plaintiffs' case was closed and when the defendant had been given two chances to offer his defence, but sought an adjournment.
35. In *Eastern Bakery -vs- Castelino* [1958] 1EA 461, the court observed that amendments sought before the hearing should be freely allowed, if they can be made without injustice to the other side, or will not prejudice the rights of the other party existing at the date of making the amendments.
36. In *Halsbury's Law of England 4<sup>th</sup> Edition Vol. 36(1) para 76*, it is indicated that if an amendment seeks to repair an omission due to negligence or carelessness, leave may be granted if it will not cause injustice to the other side.
37. I think the applicant is being mischievous and seeking, through the proposed amendment, to repair or fill in gaps in his defence and counterclaim, after the plaintiffs have closed their case. The plaintiffs have expressed the prejudice that the defendant is the one occupying the suit land and that any delay of the matter will be in his interest.
38. The court finds the application is not made in good faith. The delay has not been explained at all. The upshot is I decline to grant the prayers sought. The application is dismissed with costs.



39. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT  
KITALE ON THIS 25<sup>TH</sup> DAY OF FEBRUARY 2026.**

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

In the presence of:

Court Assistant - Dennis

Isiaho for defendant/applicant present

Magal for defendant/applicant present

