

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KITALE
ELC NO. 33 [E029] OF 2021

LABAN WANJALA KHAEMBA & 87 OTHERS-----
PLAINTIFFS

VERSUS

FRED CHIBEU FEDHA-----
1ST DEFENDANT

PETER WASHIKO FEDHA-----2ND
DEFENDANT

DIAMOND TRUST BANK LTD-----3RD
DEFENDANT

DORCAS ILAMWENYA FEDHA-----4TH
DEFENDANT

JANET KHEVALI FEDHA-----5TH
DEFENDANT

AND

LAND REGISTRAR
TRANS NZOIA COUNTY-----

INTERESTED PARTY

RULING

1. The 4th and 5th defendants, as applicants, seek leave to amend their notice of claim against a co-defendant. The reasons are contained on the face of the application dated **13/11/2025** and in a supporting affidavit of Janet Khevali Fedha, sworn

on **13/11/2025**. It is deposed that the applicants have discovered new materials that had not been disclosed to them when their notice of claim against their co-defendant was filed, that land parcel No. **7060/1** was subdivided by the 1st and 2nd defendants into **96** portions.

2. The 4th and 5th defendants depose that since the discovery, they have registered a grant revocation order issued on **14/12/2021** in **Kitale High Court Succession Cause No. 190 of 2007** against title No. **7060/1**. The 4th and 5th defendants depose that there is a need to amend the notice of claim to reflect those facts and also the reliefs sought.
3. **Order 8 Rule 5** of the Civil Procedure Rules provides that the court may, either of its own motion or on an application by any party, order any document to be amended in such manner as it directs, on such terms as it may be just for the purpose of determining the real questions in controversy, between the parties or to correct any defect or error in any proceedings.
4. In ***Institute for Social Accountability & another -vs- Parliament of Kenya & 2 others; Commission for the Implementation of the Constitution (Interested Party) [2014] KEHC 7356 (KLR)***, the court held that the

object of the amendment of pleading is to enable parties to alter their pleadings, to ensure that the litigation between them is conducted not on the false hypotheses of the facts already pleaded, or the relief or remedy already claimed, but rather based on the true state of facts which the parties really and finely intended to rely on, to make the function of the court more effective in determining the substantive merits of the case.

5. Ordinarily, courts do allow amendment of pleading unless there is undue delay, a new or inconsistent cause of action being introduced, and where no vested interests or accrued legal right is affected, or injustice is likely to be visited upon the opposite parties.
6. In **Joseph Ochieng & 2 others T/A Aquiline Agencies -vs- First National Bank of Chicago [1995] KECA 31 (KLR)**, the court said that an application for amendment should be made timeously, and the power to amend can be exercised at any stage of the proceedings. That, as a general rule, however late it is made, it should be allowed if made in good faith, the proposed amendment should not be immaterial, and that a plaintiff will not be allowed to reframe his case. See

Central (K) Ltd -vs- Trust Bank Ltd [2000] EA 365.

- 7.** In this application, the 4th and 5th defendants invoke the doctrine of new and important material which they had not laid their hands on when they first filed their notice of claim against the co-defendant. The nature source, time of discovery, and the particulars of those new facts through either official search certificates, copies of records, a mutation form, or title deeds for the **96** subdivisions of the suit property, have not been disclosed or copies attached to the supporting affidavit.
- 8.** A party that alleges discovery of new and important material has to disclose when they made the discovery and the relevance of the said material(s). The court cannot act on speculations or suppositions.
- 9.** In such a case as this, the disclosure of the said material could have enabled the court to know when exactly those new subdivisions were made, the persons or the beneficiaries through transfer, registration, or allocation, other than the parties who are before this court, so that directions may be given conclusively on joinder or addition of new parties.

10. As much as the draft notice of claim has alleged, there was a conversion of L.R. No. **7060/1** from the repealed Registration of Titles Act to the Land Registration Act regime, and new subdivisions thereof on **21/11/2011**, to **Kiminini/Kiminini Block 10/Mbao A, 1-92**; evidence of such conversion or subdivisions has not been availed. Further, the 4th and 5th defendants allege that the said changes occurred on **21/11/2011**. The delay of close to over **10** years has not been explained.

11. Amendments cannot be allowed to take away an accrued legal right or vested interest, or to deprive a party to the suit of a right to rely on the Limitation of Actions Act. In *James Ochieng' Oduol T/A Ochieng Oduol & Co. Advocates -vs- Richard Kuloba [2008] KECA 53 (KLR)*, the court held that where an amendment of pleadings would result in the defeat of a defense of limitation of time, it would not generally be allowed, except in very peculiar circumstances. In this application, the 4th and 5th defendants do not exhibit such peculiar circumstances.

12. Between **2011** and **2021**, when the suit was filed against them, there is no evidence why, within the use of due diligence, they did not know that there had been the alleged conversion of title and

subdivision of the new block. The delay is not only unreasonable but unexplained.

13. In **Mbuthi -vs- Karanja Civil Appl. E347 of 2023**, the court said that an amendment ought to be made within a reasonable time; otherwise, a late amendment amounts to an abuse of the court process. Acting in good faith is what is required of an applicant. An amendment aimed at repairing an omission due to negligence or carelessness, which would amount to injustice or prejudice on the other side, may not be allowed. See **Andrew Webuyele Biketi -vs- Chinese Centre for Promotion of Investment Development Trade & others[2015] KEHC 81181 KLR.**

14. In view of the foregoing, the court finds the application dated **13/11/2025** lacking merit. It is dismissed with no order as to costs.

15. Orders accordingly.

Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **4th** day of **March 2026**.

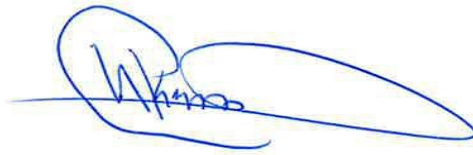
In the presence of:

Court Assistant Dennis

Miss Munyoki for Ndegwa for the 4th and 5th
defendants/applicants present

Miss. Mukanda for Nakitare for the plaintiff present

Nabwile for the 1st and 2nd defendants present
Musonye for the 3rd defendant present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**

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