

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC NO. 108 OF 2018

JULIUS MONZI.....1ST PLAINTIFF
EUNICE NDINDA MUIA..... 2ND
PLAINTIFF
JOHN KENNEDY MUTETI..... 3RD
PLAINTIFF

-VERSUS-

THOMAS MUTHIANI NZYOKA.....1ST DEFENDANT
ANTONIETTA VITALE..... 2ND DEFENDANT
PAOLA GUARNATI..... 3RD
DEFENDANT
ENRICO FATTARELLI..... 4TH
DEFENDANT
(BEING SUED AS PRESIDENT, TREASURY, AND SECRETARY
(ADMINISTRATOR) OF BETANIA ONLUS ASSOCIATION (KENYA)

RULING

1. This is a ruling in respect of a notice of motion dated 4th August, 2025 in which the 2nd to 4th Defendants/Applicants seek the following orders:
 1. That the Applicants herein be granted leave to amend their statement of defence dated 20th February, 2024 as per the draft amended statement of defence annexed hereto.
 2. That the Applicants be granted leave to file further documents as set out at paragraph 7 of the supporting affidavit.
 3. That the annexed draft statement of defence and further documents be deemed as duly filed upon payment of the requisite fees.
 4. That the costs of this application be in the cause.
2. The Applicants are seeking to amend their defence of 20th February, 2024 to include pertinent issues which were left out in the defence. They state that the amended defence will enable the court to determine all the issues in this

case and that the amendments will not occasion any prejudice to any party and does not introduce any new cause of action.

3. The Applicants are further seeking to introduce documents as shown in paragraph 7 of the supporting affidavit.
4. The Applicants' application was opposed by the Plaintiffs/Respondents based on a replying affidavit sworn on 31st October, 2025. The Respondents contend that the counterclaim which the Applicants intend to introduce is untenable as the County Council of Olekajuado had no authority to allocate the land. The Respondents state that the suit property falls within Emali town and that it is the commissioner of lands who had the authority to allocate land and that the County Council of Makueni was only used to pass on the lease to the Respondents.
5. The Respondents chose to rely on their replying affidavit without filing any submissions. The Applicant filed their submissions dated 10th November, 2025.
6. I have considered the Applicants' application as well as the opposition thereto by the Respondents. I have also considered the submissions by the Applicants. The only issue for determination is whether the Applicants have demonstrated that they deserve leave to amend their defence and file documents.
7. The Applicants are seeking leave to file an amended defence and raise a counterclaim and file documents in support thereof. The law regarding amendment of pleadings is that amendments should be allowed freely at any stage before close of the case. In the instant case, though the suit was filed in 2018, the case is yet to start. The only consideration from the court is to see that the amendments sought to be introduced do not prejudice any party or introduce a new cause of action. The parties herein are claiming the suit property. It is important that all issues relating to the suit be put before the

court for determination. A counterclaim cannot be allowed without the supporting documents being allowed as well.

8. In the case of **Elijah Kipng'eno Arap Bii –vs- Kenya Commercial Bank Limited (2013)** it was held as follows:

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); 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 compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduced a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which would more conveniently be made the subject of a fresh action; that 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 rely on Limitation Acts”.

9. I have looked at the intended amendments. The same are not introducing a new cause of action. They are not likely to prejudice any party. The documents sought to be filed shall go to support the counterclaim filed. I therefore find that the Applicants' application is meritorious. I allow the same in the following terms. The amended defence which introduces a counterclaim as well as the documents listed in paragraph 7 of the supporting affidavit shall be filed and served within 14 days. The Plaintiff shall file a reply to the amended defence and defence to counterclaim within 14 days. The 2nd to 4th Defendants shall file reply to defence to counterclaim within 14 days of being served. The costs of this application shall be in the cause.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT
TEAMS THIS 5TH DAY OF MARCH, 2026.**

IN THE PRESENCE OF:

Mr. Otieno for Applicants.

Mr. Muia for Plaintiff/Respondent.

Court assistant Musyoki & Nyaanga

ORIGINAL