

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELCC NO 4 OF 2022

SANTIN MARINO & ANOTHER PLAINTIFFS

VERSUS

JABES MDHAI ODUOR & 9 ANORRESPONDENTS

RULING

Application

1. The Notice of Motion dated 18th September 2025 is seeking the following orders:
 - a. That leave be granted to the plaintiff to amend his plaint;*
 - b. That the draft amended plaint attached to the application be deemed properly filed and served upon payment of the requisite court fees;*
 - c. That the costs of the application be provided for.*

2. The application is supported by the affidavit of **Richard Otara**, advocate dated 18th September 2025. The grounds upon which the application is brought are that the plaint contains a typographical error which needs to be corrected; that unless the amendments are allowed the issue in controversy may not be brought to the final determination and the dispute between the plaintiff and the defendants will remain unresolved. It is urged that the proposed amendment perchance granted will ensure that the plaint reflects what is contained in the plaintiffs' title to their land. It is stated in the affidavit that the suit property, portion number 5519 measures 1.029 hectares and is a subdivision emanating from another parcel known as 1738/21 which measures 112.82 acres; that at

the time of drafting, counsel captured the measurement of the mother title instead of the subdivision.

Response.

3. The first defendant opposed to the application vide his grounds of opposition dated 7th October 2025 stating as follows: the application is an abuse of the court process because the applicants were given time to amend their plaint on 20th June 2022, 26th September 2022 and 14th November 2022 but failed to do so; the application has been overtaken by events because the parties have been heard and the case has been closed and submissions have been filed; the application is an afterthought and it is meant to correct errors detected after the applicant's studied the defendants' submissions; the application is fatally defective and the same contradicts the documentary evidence adduced by the parties.

Submissions.

4. The court ordered the parties to file submissions for the disposal of the motion but only the 1st respondent filed his.

Analysis and determination

5. Under Section 100 of the Civil Procedure Act and Order 8 of the Civil Procedure Rules 2010 wide discretion is granted to court to order amendment of pleadings. It is the case that amendments are meant to do justice to the parties. They are also meant to ensure that all the

matters in the suit are effectually and finally determined, and thus prevents multiplicity of suits.

6. Order 8 rule 3 (5) provides as follows: -

“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 an amendment”.

7. It is a less complex situation when amendments are sought before the hearing of a suit. *Eastern Bakery v. Castelino, (1958) E.A.461* held as follows:

“It will be sufficient, for purposes of the present case, to say that amendments to pleadings sought before the hearings should be freely allowed, if they can be made without injustice to the other side, and that there is no injustice if the other side can be compensated by costs.”

8. An application for amendment may be made at any stage before judgment. In *Unga Limited v Magina Limited [2014] KEHC 7645 (KLR)* the court held as follows:

“I am alive to the notion that amendments to pleadings should be liberally allowed. An application for amendment may be made at any stage before judgment. The key rationale is to allow a court to effectually and finally determine the suit.”

9. In *St. Patrick’s Hill School Limited v Bank of Africa Kenya Limited [2018] eKLR* the court cited the principles governing amendment of the pleadings as set out in *Ochieng and Others v First National Bank of Chicago Civil Appeal Number 147 of 1991* by the Court of Appeal as follows:

a) The power of the court to allow amendments is intended to determine the true substantive merits of the case;

- b) The amendments should be timeously applied for;*
- c) Power to amend can be exercised by the court at any stage of the proceedings;*
- d) 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;*
- e) 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 limitations Act subject however to powers of the court to still allow and amendment notwithstanding the expiry of current period of limitation.”*

10. I have examined the application dated 18th September 2025. In view of the fact that the law allows amendments even after hearing, the applicant can not be faulted for making the application just before judgment. It is the nature of the proposed amendments that will determine the success or the otherwise of the application.
11. In the original plaint, the land subject matter of the suit was referred to as *“PORTION NUMBER 5519 ORIGINAL NUMBER 1738/21 MALINDI LT38 FOLIO 270A/1 FILE NUMBER 6724.”* It was said to measure 112.82 acres.
12. In the draft amended plaint attached to the application, it is proposed to amend the above number for the land reference to read as follows: *“PORTION NUMBER 5519 ORIGINAL NUMBER 1738/21 MALINDI LT38 FOLIO 2724/2 FILE NUMBER 6726.”* It was said to measure 1.029 hectares.
13. The objection of the 1st defendant is to the effect that the amendments contradict the documentary evidence produced by the parties. Counsel for the 1st defendant referred to the indenture exhibited in the application and pointed out that it speaks of 112.82 acres, and not 1.029 hectares which are intended to be pleaded in the amendment. He also pointed out

that the indenture copy exhibited shows that the plaintiffs' Folio Number is "**270A**" yet the same is proposed to be placed by foreign number "**2724/2**". The file number in the indenture is "**6724**" while the file number proposed to be substituted therefor is "**6726**".

14. Counsel for the first respondent points out that the power of attorney exhibited shows new number that is **LT 38 Folio 270A/1 File No 6723**. Counsel for the 1st defendant wondered whether the plaintiffs are disowning their own indenture and Power Of Attorney.

15. The court is of the view that for any proposed amendments to be valid where a case has already been heard, they must be in consonance with the evidence produced by the parties at the hearing. In the present case, the land reference number proposed to be substituted for the one pleaded in the original plaint does not correspond with the one in the plaintiffs' indenture which is their title to the suit land. The logical observation is that perchance this court allows the proposed amendment, the pleadings would still be at variance with the evidence given by the witnesses. This being a matter that has been heard to conclusion and which the court ordered the parties to file submissions in readiness for judgment before the present application was filed, and nothing relating to a rehearing of the matter having been intimated in the application, a grant of the orders sought in the application would be futile.

16. The upshot of the foregoing is that the application dated 18th September 2025 lacks merit and is hereby dismissed with costs to the

respondent. This suit shall be mentioned on **23rd March 2026** for further directions.

Dated, signed and delivered at Malindi on this 5th day of March, 2026.

A rectangular box containing a handwritten signature in blue ink, which appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**