

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELC NO E373 OF 2022

**JAGJEET SINGH (Suing as the interim Administrator of the Estate of Mehar Singh Sihra and Kehar Singh).....
PLAINTIFF**

VERSUS

**MOHAMED ALI MOHAMED MOHAMUD
.....DEFENDANT**

RULING

1. Vide a Chamber Summons dated 22nd August, 2025, brought pursuant to the provisions of **Sections 1A, 1B, 3A and 100** of the **Civil Procedure Act** and **Order 51(1), 8 Rule 3(3), 5(1) & 8, 2 Rule 5** of the **Civil Procedure Rules**, the Plaintiff/Applicant seeks the following reliefs:

- i. That this Honourable Court be pleased to grant leave to the Plaintiff herein to amend his **Plaint dated 9th November, 2022 and filed on 18th November, 2022 and enjoin the following as Defendants: Naomi Njeri Mungai, Alfred Sambut Kiboi, Wadajir (K) Limited, and further amend paragraph 4 of the **Plaint to read Original Indenture dated 17th September, 1957 instead of 17th September, 1995.*****

- ii. That the draft amended *Plaint* annexed to the application be deemed as duly filed upon payment of the requisite court fees.**
- iii. That the original indenture dated 17th September, 1957, between Padamshi Naya and Mehar Singh, son of Hari Singh and Kehar Singh, son of Hari Singh together with indenture dated 5th April, 1991, between Mehar Singh son of Hari Singh and Kehar Singh son of Hari Singh and Naomi Njeri Mungai be taken for forensic examination at Kiambu DCI Headquarters to authenticate on the signatures appended on both documents and a report prepared to be filed in court as the Plaintiffs' documents among others.**
- iv. That costs of this application be in the cause.**
2. The Application is based on the grounds on the face of the Motion and supported by the Affidavit of Jagjeet Singh Sirha, the Plaintiff herein and the interim administrator of the estate of the deceased.
3. The Plaintiff deponed that upon obtaining an interim grant, he instituted the present suit, extracted summons to enter appearance, and caused the same to be served upon the Defendant. In response, the Defendant entered appearance and filed a Statement of Defence dated 29th November 2022.

4. He further explained that the matter progressed to the pre-trial stage and was subsequently fixed for hearing on 28th February 2024. On the scheduled hearing date, however, his advocates on record encountered technical difficulties with their camera while attending court virtually and that the learned Judge, Hon. Mr. Wabwoto, accordingly directed that counsel, Mr. Sausi, be granted time to resolve the issue by changing the laptop and rejoining the court session.
5. It was deposed that Counsel accordingly stepped out to resolve the technical hitch. Unfortunately, by the time Mr. Sausi and his team rejoined the court, the matter had already been dismissed for want of attendance and/or prosecution, and the court had proceeded to continue with the rest of its long cause list for the day.
6. Mr. Sirha, deposed that he subsequently filed a Motion for reinstatement which was allowed but a year or so was wasted in the process of taking directions and hearing of the application to reinstate the suit and eventual ruling/determination.
7. At the time he instituted the suit, he deposed, he was not aware that the suit property had fraudulently been transferred to several individuals until after the Defendants filed his list of paginated documents together with statements of defense dated 29th November 2022. After perusing the Defendants documents, he noted several irregularities *to wit*:

- a. The signature of Mehar Singh and Kehar Singh appearing on the indenture dated 5th April 1991 compared with the signatures appended on the original Indenture dated 17th September 1957 are different.***
- b. That the signatures of Mehar Singh and Kehar Singh on the Indenture dated 17th September 1957 as Vendors to Naomi Njeri Mungai as the Purchaser are forged hence need to have it undergo forensic examination at the Director of Criminal Investigations (DCI) Kiambu.***
- c. That Naomi Njeri Mungai purportedly bought the suit property from Mehar Singh and Kehar Singh on the 5th April, 1991 and she sold it to Alfred Sambut Kiboi on 29th April 1991 after only 25 days from the date she bought it.***
- d. That the said Alfred Sambut Kiboi entered into an agreement dated 19th November, 2010 to sell the suit property to Abdikadir Mohamed Abdula and Rage Elmi Qaire but the suit property was transferred to Wadajir (K) Limited through an Indenture dated 10th February 2011.***
- e. That the Indenture dated 5th April, 1991 was registered in the names of Naomi Njeri Mungai on the same day of 5th April 1991 at 11:51 hours***

as presentation Number 1302, Volume Number N41, File Number 274/5 and Folio Number 12838 at 11.51 hours.

- 8.** He deponed that the Registrar of Lands effected the transfer of the suit property from Mehar Singh and Kehar Singh despite full knowledge that the original indenture was intact and remained in the custody of the deceased. It was on the strength of that very indenture that the deceased had instituted proceedings against Naomi Njeri Mungai. However, due to alleged mishandling by their Counsel, the civil suit was dismissed for want of prosecution, while the related criminal proceedings were mismanaged by the trial court.
- 9.** He further alleged that the Registrar aided in the tampering, manufacture and forgery of documents, including the signatures of the late Mehar Singh and Kehar Singh, which Naomi Njeri Mungai relied upon to transfer the property into her name.
- 10.** Despite being aware of the fraudulent nature of the transaction, he stated, Naomi Njeri disposed of the property barely a month after the purported acquisition. To date, the purchase price, the mode of payment, and the recipient of the consideration remain unknown.
- 11.** The deponent pointed out that the Defendant's list of documents disclosed several individuals and entities

connected to the suit property, namely Naomi Njeri Mungai, Alfred Sambut Kiboi, Wadajir (K) Limited, Abdikadir Mohamed Abdula and Rage Elmi Qaire, and that these parties were not initially joined to the suit, as the Plaintiff was unaware of their respective interests at the time of filing.

- 12.** On advice of counsel, he now seeks to amend the Plaint to bring all relevant parties before the court so as to enable a full and substantive determination of how the property devolved from the deceased to Naomi Njeri Mungai, and subsequently to the other transferees, notwithstanding that the original indenture remains available.
- 13.** He maintains that the application has been made timeously, that amendments may be allowed at any stage before hearing, and that the proposed changes are made in good faith to assist the court in resolving the real issues in controversy.
- 14.** With respect to the prayer seeking the forwarding of the impugned documents to the Director of Criminal Investigations, Kiambu Headquarters, for forensic examination and eventual reliance in evidence, he explained that the request is central to establishing the authenticity of the transaction chain.
- 15.** He contended that should the signatures of the late Mehar Singh and Kehar Singh on the Indenture dated 5th April 1991

be found to be forged, the legal foundation of the subsequent indentures and transfers would be fatally undermined. In that event, the entire sequence of transactions would stand impeached for fraud and illegality, thereby justifying nullification of the transfers and restoration of the land register to its original position.

- 16.** He urged that no prejudice will be occasioned to the Defendant by the joinder of the additional parties, as the suit has not yet proceeded to hearing.
- 17.** In response to the Chamber Summons, Mohammed Ali Mohamud, the Defendant/Respondent, swore a replying affidavit on 4th September 2025. He deponed that the Motion is an afterthought, frivolous and vexatious, and is primarily intended to derail or scuttle the hearing scheduled for 28th January 2026.
- 18.** He further contended that this court, as a neutral arbiter, lacks jurisdiction to grant prayer No. 4 in the manner sought by the Plaintiff. In his view, the court's discretionary power cannot be invoked to aid indolence or to sanction conduct that undermines the overriding objective of ensuring the just, expeditious, proportionate and affordable resolution of disputes.
- 19.** Mr. Mohamud also argued that the proposed amendments, particularly the joinder of the named parties, would serve no useful legal purpose as any alleged causes of action against

them are statute-barred under **Section 7** as read together with **Section 26** of the **Limitation of Actions Act**.

- 20.** He maintained that the Plaintiff is undeserving of the discretionary relief sought, having been guilty of unexplained and inordinate delay, and of conduct consistently aimed at postponing or frustrating the hearing and determination of the suit.
- 21.** Mr. Mohamud averred, on advice of Counsel, that while amendments should ordinarily be allowed to facilitate determination of the real issues in controversy, they must be sought timeously and without occasioning prejudice and that the material now relied upon for the proposed amendments is derived from documents filed as far back as November 2022.
- 22.** It is the Defendant's case that no explanation has been offered for the inordinate delay in bringing the present application; that the introduction of five new parties would inevitably revert the matter to the pre-trial stage, necessitate fresh pleadings and compliance, and substantially escalate costs and delay. Such prejudice, he contends, cannot be adequately compensated by an award of costs.
- 23.** He further emphasized that the suit itself was instituted over thirty-one (31) years ago after the suit property was transferred to Ms. Naomi Njeri Mungai in 1991, as highlighted in his Defence and that the prolonged delay

undermines the fairness of the proceedings, particularly given that some of the intended parties may no longer be available to respond to the allegations.

- 24.** He also recounted that in HCCC No. 2654 of 1991, Mehar Singh s/o Hari Singh and Kehar Singh s/o Hari Singh sued Naomi Njeri Mungai and Alfred Sambut Kiboi over the suit property, but that suit was dismissed for want of prosecution on 5th May 2009 and that related criminal proceedings in Criminal Case No. 5083 of 1991 were terminated on 28th April 1994.
- 25.** He deposed that following the termination of the criminal case, the trial magistrate purported to direct the Land Registrar to cancel the names of Naomi Njeri Mungai and Alfred Sambut and reinstate the previous proprietors, prompting High Court Criminal Revision No. 73 of 2008, Justus Nyamu & 2 Others v Republic. In a ruling delivered on 30th July 2009, Hon. Justice Njagi ordered that the names of Naomi Njeri Mungai and Alfred Sambut be reinstated in the land records.
- 26.** That decision remains valid and unchallenged. He concluded by reiterating that Ms. Naomi Njeri Mungai acquired the property in 1991, and over thirty-four (34) years have since elapsed.
- 27.** The Plaintiff filed a Supplementary Affidavit in which he deposed that the contents of the Respondent's Replying

Affidavit are grossly misplaced and founded on a misconceived understanding of the issues before the court. He asserted that an application for joinder can only be deemed unmeritorious where the intended parties are either fictitious or demonstrably played no role in the matters in dispute.

- 28.** In the present case, he maintained that the proposed Defendants are specifically identified individuals and entities who appear in the chain of documents relating to the suit property and who participated in the impugned transactions. He reiterated that the application has been brought in good faith and is necessary for the just and effectual determination of the issues in controversy.
- 29.** On the prayer seeking forensic examination, he stated that courts have frequently directed the Director of Criminal Investigations (DCI) to examine disputed documents where signatures are in question. As such, the objection on jurisdiction is misplaced, as this court retains original jurisdiction to issue such orders where necessary to assist in arriving at a just and logical determination.
- 30.** Indeed, he urged, if the Respondent had genuinely purchased the property and the signatures are authentic, he ought to have no objection to forensic scrutiny of the Indenture dated 5th April, 1991. The Plaintiff reiterated that the intended Defendants are necessary parties whose

presence will enable the court to effectually and completely determine all questions relating to the suit property, while also avoiding multiplicity of suits.

- 31.** On the issue of limitation, he maintained that **Section 7** of the **Limitation of Actions Act** cannot apply in cases founded on fraud or forgery. He relied on **Section 26** of the **Act**, stating that the alleged forgeries were only discovered after the impugned Indenture was filed and served upon him on 30th November 2022, and that is when time began to run for purposes of limitation.
- 32.** On the question of delay, he explained that the suit had previously been dismissed under unusual circumstances but was later reinstated unconditionally. He attributed part of the delay to the earlier dismissal, which occurred after his advocate had been granted time to resolve technical difficulties during a virtual hearing.
- 33.** He also noted that the Defendant had acknowledged prior civil and criminal proceedings instituted by the deceased Mehar Singh and Kehar Singh upon discovery of the alleged forged transfer to Naomi Njeri Mungai, which was followed by a sale within twenty-five days. However, those proceedings were never determined on their merits, leaving the legality of the initial transfer unresolved.
- 34.** In conclusion, the Plaintiff maintained that the true circumstances surrounding the transfer of the suit property

from the late registered owners, cannot be ascertained without the joinder of the intended Defendants. He urged that the proposed amendments are necessary for the just and complete adjudication of the dispute and prayed that the Chamber Summons be allowed. The parties filed submissions and authorities which I have considered.

Analysis and Determination

35. Having analyzed the pleadings and submissions by the parties, the issues for determination are:

- i. *Whether the Plaintiff/Applicant's Application for amendment is merited?*
- ii. *Whether the Indentures dated 17th September, 1957 and 5th April, 1991 should be forwarded to the DCI, Kiambu, for forensic examination of the signatures and the report filed in court as evidence?*

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

37. 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.”

38. 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.”

39. 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 vs 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 with regards to the rule to amendment of pleadings:

“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.”

40. More recently, the Court of Appeal in *Elijah Kipngeno Arap Bii vs Kenya Commercial Bank Limited [2013] KECA 345 (KLR)* affirmed that the law applicable to amendment of pleadings is as stated in **Bullen and Leake & Jacob's Precedents of Pleadings - 12th Edition** and captured by the Court of Appeal decision in *Joseph Ochieng & 2 others vs First National Bank of Chicago, Civil Appeal No. 149 of 1991* thus:

“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 introduce 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 could

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.”

- 41.** It is apparent that the courts’ discretion to allow amendment of pleadings at any stage of the proceedings is wide and unfettered except, that it should be exercised judicially and upon defined principles so as to bring out the real issues in controversy between the parties and on such terms as to costs as may be just.
- 42.** By way of brief background, the Plaintiff instituted a suit on the 9th August, 2022 as against the Defendant seeking *inter-alia*, permanent injunctive orders restraining him from trespassing on sub-division number 323(Original No 7/7) Section No V11 No 36 Meridional District Section A37, eviction orders, loss of rent and mesne profits.
- 43.** The Plaintiff’s case is that he remains in possession of the original Indenture dated 17th September 1957, executed when the deceased purchasers acquired the suit property from Padamshi Naya. According to the said Indenture, Padamshi Naya relinquished all his interest in the property upon receipt of the full purchase price from the deceased purchasers.
- 44.** He further averred that sometime in 2016, the 1st Defendant unlawfully trespassed onto the suit property and proceeded

to demolish a three-bedroom house erected thereon, while purporting to claim ownership. The Plaintiff contends that any document relied upon by the 1st Defendant is forged and manipulated, and that as a result of the Defendant's alleged fraudulent actions, he has suffered substantial loss of income.

- 45.** Vide the present proposed amendments, the Plaintiff seeks to introduce additional Defendants on the basis that the suit property allegedly devolved through them before its eventual transfer to the 1st Defendant and seek orders in that respect. He contends that their inclusion is necessary to enable the court to interrogate the impugned chain of transactions, and to determine, conclusively and in one suit, whether the transfers were tainted by fraud or illegality and what orders ought to issue.
- 46.** The Defendant opposes the Motion principally on the grounds that the application has been brought after inordinate and unexplained delay, the proposed joinder vide the amendment will occasion prejudice by reopening pre-trial and derailing the hearing; and that any intended causes of action against the proposed Defendants is statute-barred under **Sections 7 and 26 of the Limitation of Actions Act.**
- 47.** The court agrees that timelines are a relevant consideration in applications for amendment. The present Motion was filed in August 2025, yet the Plaintiff acknowledges that he

became aware of the additional parties and the impugned documents upon service of the Defence and bundle in November 2022.

48. Even accounting for the intervening period when the suit was dismissed and later reinstated, which reinstatement was done on 31st October, 2024, the Motion has still been brought very late in the day. The delay has not been sufficiently explained.
49. That said, delay, of itself, does not constitute an absolute bar to amendment, particularly where the suit has not proceeded to hearing and no evidence has been taken. The court must balance the period of delay against the overarching objective of facilitating the just, expeditious and proportionate determination of the real questions in controversy, in line with the demands of substantive justice.
50. In the present case, the proposed amendments principally seek the joinder of additional parties. As with amendments to pleadings generally, the central consideration is whether the presence of the intended parties is necessary to enable the court to effectually and completely adjudicate upon the issues in dispute. Addressing the principles governing joinder, the Court of Appeal in ***Civicon Limited vs Kivuwatt Limited and 2 Others [2015] eKLR*** stated as follows:

“Again the power given under the Rules is discretionary which discretion must be exercised judicially. The objective of these Rules is to bring on record all the persons who are parties to the dispute relating to the subject matter, so that the dispute may be determined in their presence at the time without any protraction, inconvenience and to avoid multiplicity of proceedings. Thus, any party reasonably affected by the pending litigation is a necessary and proper party, and should be enjoined.”

51. Crucially, it is not disputed that the persons sought to be joined appear within the chain of dealings relating to the suit property. Indeed, the Defendant’s own case traces the property through those dealings, and his contention that any claim against them is statute-barred only underscores their nexus to the dispute. Such pleas, in the court’s view, are matters properly reserved for substantive determination upon full pleadings and evidence, rather than at this stage.

52. In the premises, the court is satisfied that the intended amendments are directed at placing before it the real questions in controversy and are not merely technical in nature. As regards the alleged prejudice, the court considers that any such prejudice can be mitigated through appropriate case management directions and an award of costs.

- 53.** Ultimately, the imperative of a full and final resolution of the dispute must prevail. Leave to amend is therefore merited, on terms that safeguard the expeditious disposal of the suit.
- 54.** The second issue for determination is whether the Indentures dated 17th September, 1957 and 5th April 1991 should be forwarded to the DCI, Kiambu, for forensic examination of the signatures and the report filed in court as evidence,
- 55.** The basis of the request is that the signatures appearing on the Indenture dated 5th April 1991 differ from those appearing on the earlier Indenture, and that the later signatures are alleged to be forgeries.
- 56.** The Defendant contests that prayer. He argues that this court is a neutral arbiter and ought not to be drawn into directing investigative agencies on how to conduct inquiries. He further contends that the application, coming at a late stage, is calculated to derail the hearing and to shift the Plaintiff's evidentiary burden to the court and third parties.
- 57.** This court agrees with the Defendant on the applicable approach. Kenya's civil process is adversarial. He who alleges must prove. The burden of proof lies on the Plaintiff to establish the alleged forgery and fraud to the requisite standard, and the court cannot be invited to step into the arena by procuring evidence on a party's behalf.

- 58.** Nothing prevents the Plaintiff, at his own instance, from engaging a handwriting expert, presenting the questioned documents for examination, and producing the resultant report in accordance with the law.
- 59.** Equally, if any party wishes to lodge a criminal complaint for investigations, the law provides avenues for that process independent of these civil proceedings. In this suit, however, the court's role is to adjudicate on evidence placed before it by the parties, not to direct investigative steps as a means of building a party's case.
- 60.** In the premises, the prayer that the Indentures be forwarded to the DCI, Kiambu Headquarters for forensic examination is declined.
- 61.** In the end, the Motion dated 22nd August, 2025 partially succeeds. The court grants the following orders:
- a) Leave be and is hereby granted to the Plaintiff to amend his Plaint dated 9th November, 2022 and filed on 18th November, 2022 and join the following persons as Defendants:
Naomi Njeri Mungai
Alfred Sambut Kiboi
Wadajir (K) Limited.**
 - b) Leave be and is hereby granted to the Plaintiff to amend paragraph 4 of the Plaint to read**

**“Original Indenture dated 17th September, 1957”
instead of “17th September, 1995.”**

- c) The amended Plaintiff to be filed and served on all parties within 14 days of this Ruling.**
- d) The Plaintiff shall bear the costs of the Motion.**

Dated, signed and delivered virtually in Nairobi this 12th day of March, 2026.

**O. A. Angote
Judge**

In the presence of:

Mr. Sausi for Plaintiff/Applicant

Mr. Muchoki for Defendant

Court Assistant: Tracy