



Sigma Feeds Limited v Metcourt Hostels Limited & 9 others (Environment and Land Case Civil Suit 420 of 2008 & Environment and Land Case 740 of 2011 (Consolidated)) [2026] KEELC 1183 (KLR) (19 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1183 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT AND LAND CASE CIVIL SUIT 420 OF 2008 & ENVIRONMENT AND LAND CASE 740 OF 2011 (CONSOLIDATED)

AA OMOLLO, J

FEBRUARY 19, 2026

BETWEEN

SIGMA FEEDS LIMITED PLAINTIFF

AND

METCOURT HOSTELS LIMITED 1ST RESPONDENT

STEPHEN MUNGAI GACHERU & JOSEPHINE WANJIRU GACHERU (SUING AS ADMINISTRATORS OF THE ESTATE OF JAMES MWANGI GACHERU) 2ND RESPONDENT

PETER NKONGE 3RD RESPONDENT

MARTIN GACHERU 4TH RESPONDENT

ROMANO KIOME 5TH RESPONDENT

WILLIAM KANGONGO KOECH 6TH RESPONDENT

JUSTUS KATHENGE 7TH RESPONDENT

ALEX KAMANDE 8TH RESPONDENT

ROCKFIELD BUILDING & CONST LTD 9TH RESPONDENT

AND

COUNTY GOV'T OF NAIROBI DEFENDANT



RULING

1. The Plaintiff has brought the present application dated 14th October, 2025 under the provisions of the Article 50(1) Constitution 2010, Section IA, 1B, 3A and Section 100 of the Civil Procedure Act, 2010, and Inherent Powers of the Court, Order 1 Rule 3, 7, 9, 10(2), (4), Order 2(5), Order 8 Rule (3), 5(1) of the Civil Procedure Rules, 2010, and all other enabling provisions of the law. It asks for orders:
 - a. That leave be granted to the Plaintiff to amend the Plaintiff as per the draft Amended Plaintiff annexed hereto.
 - b. That the annexed hereto draft Amended Plaintiff be deemed as having been duly filed and served after payment of the requisite filing fees.
 - c. That the costs of this application be provided for.
2. The application is grounded on the matters pleaded on its face inter alia;
 - a. This matter has been fully heard and is pending the filing and exchange of written submissions.
 - b. The proposed amendment shall not in any way prejudice the Defendants, as the facts giving rise to the prayers sought were duly canvassed during the hearing of the main suit.
 - c. It is therefore in the interest of justice that the Plaintiff should be granted leave to amend its Plaintiff filed herein.
 - d. The 7th and 8th Defendant's Advocates who have fully participated at the hearing had already filed and served a Notice of Appointment of Advocates dated 15th November, 2010, in ELC No. 420 of 2008, to act for the proposed 10th Defendant.
 - e. The Honourable Court has an unfettered power and discretion to initiate, suo moto, the addition of such a concerned party like the proposed 10th Defendant
3. The application was also supported by the affidavit of KIRTESH P. SHAH sworn on the 14th October, 2025. He deposed that as the managing director of the Plaintiff he is conversant with the facts of this case. He avers that the 7th and 8th Defendants admit involvement in the disputed demolitions but state they acted on instructions of their superiors as agents, employees, and/or servants of the proposed 10th Defendant. Consequently, if they are found at fault, the Plaintiff may alternatively claim that the proposed 10th Defendant is also liable on the basis of vicarious liability.
4. That the proposed 10th Defendant is the successor to the City Council of Nairobi, which had already been joined in the Judicial Review proceedings after it had issued the Enforcement Notice. That it was also served with the pleadings and injunctive court orders and actively participated in the Judicial Review proceedings and subsequent appeals arising from the contested Enforcement Notice dated 6th January 2009.
5. The deponent stated he testified at the hearing of this suit and amongst the others, the 7th and 8th Defendant have in their testimony cited their involvement in the demolition and eviction whose legality is one of the most controversial issues hereof. The 7th and 8th Defendants stated emphatically in their respective defences that they were under the instructions of their superior, acting as the agents, servants and/or employees of the proposed 10th Defendant.



6. The deponent seeks to amend the prayers in the Amended Plaintiff and apologises for the delay, explaining that the belated application resulted from an oversight due to the complexity of the consolidated case involving intricate legal issues.
7. The application is opposed by the Defendants through their grounds of opposition and the replying affidavit. The 1st and 4th Defendants filed grounds of opposition dated 20th November, 2025 stating that the application is an abuse of the court process. They aver the application defeats their inalienable right to fair hearing under article 50 of *the Constitution*. That the application is a ploy by the Plaintiff to re-structure its case after the Defendants had closed their case hence they will suffer prejudice.
8. The 5th Defendant filed grounds of opposition dated 1st December, 2025 stating inter alia that the application offends the provisions of order 1 rule 14 of the Civil Procedure Rules as it seeks to add a new party after the trial has concluded. The 4th Defendant pleads that the application offends the provisions of section 4(2) of CAP 22. He also pleaded the proposed amendment will prejudice them as they close their case.
9. The 7th and 8th Defendants filed a replying affidavit sworn by Alex Kamande on 27th November 2025. He deposes that the application is incurably defective and should be struck out with costs. That the application is intended to convolute, forestall and delay the court process.
10. They depose that the supporting affidavit falsely states that he had filed a notice of appointment of advocate dated 15.10.2010 to act for the proposed 10th Defendant. Further, the Plaintiff has not demonstrated how the intended party will suffer prejudice if they are not joined. The 8th and 9th Defendants urged the court to dismiss the application with costs.

Submissions:

11. Vide submissions dated 4th December, 2025, the Plaintiff cited the Rules in support of their application, inter alia Order 1(10), which gives this court discretion to allow amendment of pleadings and Order 8(5), which provides the general power to amend for purposes of determining the real questions in controversy between parties.
12. It also cited the cases of *G. L Baker Ltd vs Medway Building Supplies Ltd (1958) 1WLR 1216 P. 1231, (1958) ALL ER 540-546, Jenkins L. J* said that the object of the court is to decide the rights of the parties and not punish them for mistakes they made in the conduct of their cases by deciding otherwise in accordance of their rights.
13. The Applicant submits that there will be no need to re-call any evidence already given if the request for joinder of the proposed 10th Defendant is allowed. It urged the court to grant the orders sought.
14. The 6th and 7th Defendants relied on their grounds of opposition dated 24th November, 2025 and submissions dated 8th December, 2025. They submit that the intended 10th Defendant has never been a party to these proceedings, hence their advocate could not represent them. The 6th and 7th Defendants aver that the Plaintiff had over 15 years to decide to join the intended party, and bringing this application now is an afterthought. It is their case that they will be greatly prejudiced if the application is allowed due to delay and incurring more costs.

Analysis and Determination:

15. There is no doubt that the Rules of Civil Procedure allow for amendment of pleadings at any stage before judgment. The Rules further provide that, where a statement of defence has been filed, an



amendment may be undertaken only with the leave of the court. It follows, therefore, that a party seeking leave of the court must demonstrate good reasons why such leave should be granted.

16. In the current proceedings, the application for leave to amend has been filed after all the parties have called witnesses and closed their cases. It was filed after the court had given directions for the filing of the closing submissions. Needless to add that the matter is old, going by the year of its filing in 2008.
17. It is therefore my considered opinion that the Applicant herein, besides proving the need to amend, had an obligation to explain the delay in order to enjoy the exercise of this court's discretion. There is no reason pleaded on the grounds of the application or the affidavit sworn in support thereof. All the Applicant states is that no prejudice will be occasioned to the Respondents if the application is allowed.
18. The Applicant pleaded that the 6th and 7th Defendants admitted participating in the impugned demolition and doing so as employees of the proposed 10th Defendant. They also pleaded that the proposed 10th Defendant was a party in the Judicial Review and appeals against the enforcement notice. In essence, the Applicant is expressing to the court that it was aware of the involvement, if at all, of the proposed 10th Defendant in the cause of action which resulted in the filing of this suit.
19. The Applicant, however, chose not to include the County Government then and only realised the need to include them now after all witnesses had testified and the case was ready to be reserved for judgment. It is my considered view that, having been aware of the facts all along, the Applicant was indolent.
20. The Applicant argues the Defendants will not suffer any prejudice as there will be no need to recall any witness. This is far from the truth because once the proposed party is added to these proceedings, it will be entitled to cross-examine the witnesses, particularly those of the plaintiff and the 6th and 7th Defendants, whose defence is to the effect that they acted as its employees. There is no doubt that permitting the amendment would require reopening the matter for trial.
21. For this court to grant such an order, the Applicant had a duty to demonstrate very good reasons, which it has failed to discharge. I am persuaded by the Defendants' argument that the application as filed is an abuse of the court process as the Plaintiff has proceeded on the assumption that the exercise of discretion is an automatic right. The application has been brought after undue delay and without explanation for that delay.
22. In light of the foregoing, I conclude and hold that the application dated 14th October, 2025, is without merit. It is dismissed with costs to the Defendants.

DATED, SIGNED AND DELIVERED AT KISII VIRTUALLY THIS 19TH OF FEBRUARY, 2026.

A. OMOLLO

JUDGE

