

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC 278 OF 2016

PREM LAL RAMNATH GUPTA
PLAINTIFF

VERSUS

ESTHER KACHE & OTHERS
DEFENDANTS

RULING

Application

1. The Notice of Motion dated 23rd September 2024 is seeking leave to amend the 2nd defendant's Amended Statement of Defence and Counterclaim. The application is supported by the affidavit of **Muthama Adams**, advocate. The grounds upon which the application is brought are as follows: that the suit land was set aside as a public utility land and so it ceased being available for further alienation or allocation by the government of the Republic of Kenya to any person and the County Government of Kilifi therefore requires leave of court to amend its statement of defence so as to plead a counterclaim in that regard against the plaintiff, and also to seek the appropriate reliefs.
2. The application is opposed through the grounds of opposition dated 25th October 2024 filed by the plaintiff.
3. The application was disposed of by way of written submissions.
4. The submissions of the defendant are dated 4th February 2026. The defendant's submissions reiterated what is stated in the application. Citing **Section 100 CPA** and **Order 8 Rule 3 and 5 CPR** and *Joseph*

Ochieng & 2 Others Trading As Aquiline Agencies Vs First National Bank Of Chicago 1995 eKLR, counsel submitted that as a general principle, amendments to introduce claims should be liberally allowed to avoid a multiplicity of suits.

5. The plaintiff filed submissions dated 10th February 2026. Citing the case of *Joseph S. Wafula Versus Elena Chepkurugat Talam Sued as Deliver Administrator Of The Estate Of The Late Kiptalam Arap Kogo 2019 eKLR* and *Uchumi Supermarkets Limited And Another Versus Sidhi Investment Limited 2018* counsel submitted that the application has been brought after undue delay; that the defendant seeks to amend its pleading to include information that has already been provided in its defence of 2014; that even if the application were to be dismissed, this court will still be able to reach a determination without the proposed amendment; that the application has been brought 10 years after the institution of the suit; that if the application is allowed, it will take a considerable amount of time before the parties can put in a response and obtain court directions and this will occasion prejudice to the other parties and in particular the plaintiff who is keen on having this matter concluded.

Analysis and determination

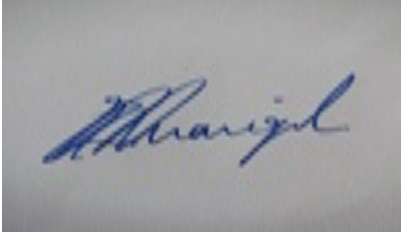
6. I have considered the application and the submissions of the parties. I do not find any serious opposition to the application for amendment. An indicator of this is in the submission contained at **page 2** of the plaintiff's

submissions to the effect that the information that the defendant is seeking to include has been reiterated in its defence of May 2014 and that the court will still be able to reach a determination without the proposed amendment. The application is not opposed by the 3rd defendant the Attorney General, or by the first defendant. The proposed counterclaim is based on the same information as has been pleaded in the defence. The only difference is that they are prayers now to benefit the 2nd defendant based on the same set of facts, brought by way of a counterclaim.

7. I find no good ground upon which to decline the application dated 23rd of September 2024, and I conditionally grant it in terms of **prayer no 1** thereof, and I further order those costs be in the cause. However, **prayer no 1** is however granted to the extent that the draft 2nd defendant's amended statement of defence and counterclaim shall be filed and served within 14 days from today. Responses to the newly amended pleading shall be filed and served within 14 days from the date of its service. Parties shall also file their trial bundles and exchange them within the same period.

8. This suit shall be listed for mention for pretrial on **28th May 2026**.

Dated, signed and delivered at Malindi on this 17th Day of March, 2026.

A rectangular box containing a handwritten signature in blue ink. The signature is cursive and appears to read 'Mwangi Njoroge'.

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