



Umagara Wiyonere Co. Ltd v Samora & another (Environment and Land Case E142 of 2023) [2026] KEELC 1593 (KLR) (23 March 2026) (Ruling)

Neutral citation: [2026] KEELC 1593 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E142 OF 2023
CA OCHIENG, J
MARCH 23, 2026**

BETWEEN

UMAGARA WIYONERE CO. LTD PLAINTIFF

AND

MWAURA SAMORA 1ST DEFENDANT

NAIROBI CITY COUNTY 2ND DEFENDANT

RULING

1. What is before the Court for determination are two identical applications filed by the Plaintiff. They are the Notice of Motions dated 8th May 2025 and 18th July 2025 in which the Plaintiff seeks the following Orders:
 - a. That this Honourable Court be pleased to grant the Plaintiff/Applicant leave to amend his plaint and list of documents and the draft plaint dated 8th May 2025 and filed herewith be deemed as duly served upon payment of the requisite court fee.
 - b. That costs of this application be in the cause.
2. The applications are premised on grounds on their face and on the supporting affidavits of John William Maina Kamau. He avers that the Plaintiff is desirous of amending the plaint herein so as to place all the issues in controversy and the right parties to the dispute before this Court for appropriate adjudication. Further, that no prejudice will be suffered by the Defendants if the orders sought are granted. He annexed a copy of the Plaintiff's draft amended plaint.

Response

3. The applications are opposed by the 1st Defendant who filed a replying affidavit. He avers that while the Plaintiff seeks to introduce four more defendants to the suit, it has not disclosed any reason to warrant



their participation thus they have no identifiable stake in the matter. Further, that the Plaintiff seeks to introduce new facts thereby altering the nature of the suit. He contends that the Plaintiff also seeks to introduce new prayers including prohibitory orders pending hearing and determination of the suit, a prayer which ought to be sought in an interim application and given that injunctive applications filed herein have been dealt with, the said prayer is res judicata.

4. The 2nd Defendant filed Grounds of Opposition which mirror those averred in the 1st Defendant's replying affidavit.
5. The application was canvassed by way of written submissions.

Submissions

6. The Plaintiff submits that under Order 8 Rule 3 (i) of the Civil Procedure Rules, amendments may be allowed after close of pleadings. Further, that contrary to the 1st and 2nd Defendants' assertion that the intended 3rd to 6th Defendants have no stake in the suit, there is relief which flows from them as any Decree arising out of the suit cannot be effectively enforced without their presence, thus they are proper and necessary parties to the suit.
7. To buttress its submissions, the Plaintiff relied on the following decisions: Joseph Njau Kingori v Robert Maina Chege & 3 others (2002) KLR 243 and Khan v Roshan (1965) EA 289.
8. On his part, the 1st Defendant submits that joining the intended 3rd to 6th Defendants shall not aid this Court in resolving the dispute thus the Plaintiff has not met the threshold for their joinder. Further, that since no cause of action has been disclosed against the said intended Defendants, they do not qualify as necessary parties. To this end, he relied on the case of Youth Limited v Daniel Njoroge Kihiko & another, Kenya Railways Corporation [2024] eKLR.
9. The 2nd Defendant reiterates its Grounds of Opposition and submits that there is no nexus between the 3rd to 6th Defendants and the suit property thus joining them is unnecessary.

Analysis and Determination

10. Upon consideration of the two instant Notice of Motion applications including the respective affidavits, Grounds of opposition and respective submissions, the only issue for determination is whether the Plaintiff should be granted leave to amend its plaint and join the 3rd to 6th Defendants as parties in these proceedings.
11. The Plaintiff has sought leave to amend the Plaint to include the 3rd to 6th Defendants. The 1st and 2nd Defendants contend that the amendments sought will introduce a new cause of action and that the intended 3rd to 6th Defendants are not necessary parties thus amendments to join them is not justified.
12. The Court has discretion to grant a party leave to amend pleadings. Order 8 Rule 3 (1) of the Civil Procedure Rules states that:

“(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.”



13. Further, Order 8 Rule 5 (1) of the Civil Procedure Rules provides as follows:

“(1) For purposes of determining the real question in controversy between the parties, or of correcting any defector error in any proceedings, the court may either of 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.”

14. On a keen reading of the legal provisions cited, I note the Court is granted discretion to allow amendments for purposes of determining the real question in controversy between the parties.

15. In *Central Kenya Ltd v Trust Bank Ltd & 5 others Civil Appeal No.222 of 1998 [2000] eKLR*, the Court of Appeal stated that:

“... the guiding principle in applications for leave to amend is that all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in costs.....”

16. In the case of *Joseph Ochieng & 2 others Trading as Aquiline Agencies v First National Bank of Chicago [1995] eKLR* the Court held 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 but subject however to powers of court to still allow such an amendment notwithstanding the expiry of current period of Limitation: that the court has powers even (in special circumstances) to allow an amendment adding or substituting a new cause of action if the same 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 action by the party applying for leave to seek the amendment.”

17. Further, in *Tarmohamed v Mariakani Holdings Limited & another [2022] KECA 122 (KLR)*, the Court of Appeal stated that:

“....rules that apply to amendment of pleadings will apply, namely that amendments should be liberally allowed, if they can be made without injustice to the other side, or where such injustice can be compensated by costs.”

18. On perusal of the Court record, I note the Plaintiff seeks to amend the Plaint to bring in the 3rd to 6th Defendants that are public entities tasked with management of land at different levels. I further note that this matter has never proceeded for hearing and the fulcrum of the dispute in the proposed amended Plaint still revolves around ownership of the suit property. The Defendants have vehemently opposed the proposed amendments and insisted that the 3rd to 6th Defendants are not necessary parties herein. Further, that a new cause of action is being introduced by the proposed amendment. It is my considered view that the amendments sought are not going to substitute a new cause of action as claimed by the Defendants but only include certain reliefs including parties and this will enable the Court appreciate the facts in respect to the dispute over the said property. I opine that even though the intended 3rd to 6th Defendants have no stake in the suit as claimed by the Defendants, there is relief



which flows from them as any Decree arising out of the suit cannot be effectively enforced without their presence, thus they are proper and necessary parties to the suit. Further, that the Defendants have not demonstrated any prejudice they will suffer if the amendment sought are granted. To my mind, the Defendants will also be allowed to amend their Defences including file further witness statements or documents to support their respective claims.

19. In the foregoing while relying on the legal provisions cited and associating myself with the decisions quoted, I will allow the Plaintiff to amend its Plaintiff. I will also grant the Defendants leave to amend their respective Defences if need be.
20. In the circumstances, I find the instant Notice of Motion applications merited and will allow them.
21. I grant the Plaintiff leave of fourteen (14) days to file and serve its Amended Plaintiff and upon service the Defendants also have leave of fourteen (14) days to file and serve their respective amended Defences.
22. Costs will be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF MARCH, 2026

CHRISTINE OCHIENG

JUDGE

In the presence of:

Andati for Plaintiff

Nyakoe for 2nd Defendant

Ms Amwama for 1st Defendant

Court Assistant: Joan

