

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ELC CIVIL SUIT NO. 26 OF 2019

VERONICA TERIGI LUKORITO-----
PLAINTIFF/APPLICANT

VERSUS

MICHAEL BETT
SIROR-----DEFENDANT/RESPONDENT

RULING

- 1.** By an application dated **5/12/2025**, the plaintiff, as the applicant, is seeking to amend the plaint dated **27/3/2019**, as per the draft amended plaint.
- 2.** The applicant's grounds of the application, as stated in the affidavit sworn by the applicant on **5/12/2025**, are that the plaint sought to be amended lacks specifics of the portion of land she bought, as well as the consideration paid.
- 3.** The respondent has opposed the application through a replying affidavit sworn on **15/12/2025**. He deposes that the suit was filed over **6** years ago; the application serves no purpose; the applicant's claim

is known and can be ascertained from the pleadings; the proposed amendments are to defeat the hearing.

4. Further, the respondent deposes that **Kitale HCC No.136 of 2000(OS)**, where the applicant was a party, over the same subject matter, was ruled in favor of the respondent; attached as **DK 1** is a copy of the ruling. The respondent deposes that the applicant had also filed a similar dispute as **Nairobi HCC No. 2028 of 1988**.

5. The respondent also states that the applicant had attempted to illegally acquire title deeds from the subdivision of a non-existent parcel of land. The respondent avers that this led to **Kitale ELC Petition No. 5 of 2017**. A copy of the judgment is attached as **DK2**.

6. The respondent deposes that the firm of BS Advocates LLP is not on record in this matter and therefore the application is untenable, unsustainable, and incompetent.

7. The applicant relies on written submissions dated **18/12/2025**. He submits that he seeks to amplify the prayers for adverse possession in paragraphs **5(a)** and **9** of the proposed amended plaint; specific performance of the contract/agreement between the

plaintiff and the defendant, injunction to restrain interference, and enforcement of trust.

- 8.** The applicant also submits that he seeks to amplify the specific particulars of the claim to specify the exact portion that was purchased and the consideration paid, which are lacking in the initial plaint dated **2/3/2019**.
- 9.** The applicant submits that the proposed amendments aim to properly align the pleadings with the evidence for the just determination of the controversy. Further, the respondent can be compensated by way of costs for any hardship.
- 10.** The applicant relies on **Central Kenya Ltd -vs- Trust Bank Ltd & 5 others [2000] eKLR** and **Eastern Bakery -vs- Castelino [1958] EA 461**. That amendment of pleadings ought to be freely allowed.
- 11.** The power of the court to order the amendment of pleadings is provided for in **Order 8 Rule 5** of the Civil Procedure Rules. It provides that for the purpose of determining the real question in controversy between the parties, or of correcting any defect or 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.

12. Order 8 Rule 3 of the Civil Procedure Rules provides for the amendment of pleadings where leave of court is required.

13. The principles for amendment of pleadings were elaborated in **Coffee Board of Kenya -vs- Thika Coffee Mills Limited & 2 Others (2014) eKLR,** the court held that;

a) Amendments should be allowed if necessary for the determination of the real controversies in the suit.

b) The proposed amendment should not alter or be a substitute for the cause of action based on which the original list was raised.

c) Inconsistent and contradictory allegations in negation of the admitted position of facts or mutually destructive allegations of fact would not be allowed to be incorporated by means of amendments;

d) Proposed amendments should not cause prejudice to the other side, which cannot be compensated by means of costs.

e) Amendments of a claim or relief barred by time should not be allowed.

- f) No amendment should be allowed that amounts to or results in defeating a legal right of the opposite party on account of lapse of time.*
- g) No party should suffer on account of the technicalities of law, and amendments should be allowed to minimize the litigation between the parties.*
- h) The delay in filing the petitions for amendment should be properly compensated by costs.*
- i) An error or mistake, which is not fraudulent, should not be made the ground for rejecting the application for amendment of pleadings.*

14. The power to grant leave to amend is discretionary. It must be exercised rationally and liberally to ensure the determination of the substantive merits of the case, unless it would cause prejudice or injustice to the other party. See ***Elijah Kipngeno Arap Bii -vs- Kenya Commercial Bank Limited [2013] KECA 345 (KLR), Joseph Ochieng & 2 others Trading as Aquiline Agencies -vs- First National Bank of Chicago [1995] KECA 31 (KLR)*** and ***Kassam -vs- Bank of Baroda [Kenya] Ltd[2002] eKLR.***

15. In this application, the applicant is blamed for the inordinate delay in seeking the amendments.

- 16.** In **Central Kenya Limited -vs- Trust Bank Limited & 5 Others [2002] eKLR** the court held that a party is allowed to make such amendments as may be necessary, for determining the real question controversy or to avoid a multiplicity of suits, provided that 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. The court went on to hold that an amendment may be allowed provided there has been no undue delay, that a new or inconsistent cause of action is brought or introduced, and that no vested or accrued rights of the opposite party are affected or injustice visited on such a party.
- 17.** The respondent terms the application as coming too late, it is immaterial, made in bad faith, lacks merit, and a delaying tactic, as similar applications in other suits had been made. It is an abuse of the court process, and the respondent was successful in a previous suit on the issues sought to be introduced.
- 18.** A court, as held in **Joseph Ochieng & 2 others Trading as Aquiline Agencies -vs- First National Bank of Chicago [1995] KECA 31 (KLR)**, may

disallow an amendment of an existing suit if it will amount to denying the opposite party an accrued or vested right or interest.

19. An applicant may also be denied to amend if it amounts to an abuse of the court process, is made in bad faith, or seeks to introduce immaterial, useless, or merely technical issues. Trying to introduce a new cause of action or alter the character of the initial pleading are some of the reasons why a court may decline an application for leave to amend.

20. In this application, the respondent has pleaded that he was a beneficiary of a decree in a previous suit, where the suit land was decreed to him against the applicant, hence the applicant is trying to introduce a new matter, or issue or undo his loss in the previous suit by way of an amendment, See **Cheruiyot -vs- Siror (Environment and Land Case 117 of 2016) [2026] KEELC 1312 (KLR).**

21. In **Eastern Bakery -vs- Castelino Case (1958) EA 461**, the court held that an amendment should be allowed if it will not occasion an injustice to the other party, capable of compensation by way of costs. The court held that a court will refuse an

amendment aimed at changing the subject matter of the suit or its character.

22. In *Halsbury's Laws of England 4th edition Vol 36(1) par 76*, an amendment will not be allowed if it is intended to adduce a new ground of defence or to repair an omission due to negligence or carelessness.

23. In ***Gladys Nduku Nthuki -vs- Letshego Kenya Limited; Mueni Charles Maingi (Intended Plaintiff) [2022] KEHC 2227 (KLR)***, the court held that leave to amend will be granted unless the applicant is acting in mala fides or his actions have injured the opponent and cannot be compensated by costs.

24. Looking at the case law against the application before the court, I think the applicant has come too late in the day. His reasons for seeking to amend the plaint are not given or sufficiently substantiated.

25. The respondent has alleged that the firm of BS Advocates LLP is not on record for the applicant. However, there is a notice of appointment dated **17/7/2025** and filed on **21/7/2025** and **18/7/2025**, indicating that the firm is acting alongside the law firm of M/S Ham & Hamsley Advocates.

26. Seeking to undo a valid judgment in favour of the respondent through his late amendment, for a court to sit on an appeal of its own judgment would not be in the interest of justice. The issue of *res judicata* has not been substantiated.

27. The upshot is that the application is dismissed with costs.


Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at Kitale, this **24th** day of **March 2026**.

In the presence of:

Court Assistant - Dennis

Mr. Momanyi for the defendant present

B.S. Advocates absent



**HON. C.K. NZILI
JUDGE, ELC KITALE.**