



REPUBLIC OF KENYA



**Mulwa v Njau & 3 others (Environment and Land Appeal
E042 of 2024) [2026] KEELC 1776 (KLR) (25 March 2026) (Judgment)**

Neutral citation: [2026] KEELC 1776 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND APPEAL E042 OF 2024
NA MATHEKA, J
MARCH 25, 2026**

BETWEEN

JUSTUS MUTHUI MULWA APPELLANT

AND

NICHOLAS MUCHENE NJAU 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

DIRECTOR OF SURVEY 3RD RESPONDENT

THE HON ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

1. The Appellant herein Justus Muthui Mulwa being dissatisfied with the whole of the Ruling and /or Orders of Honorable B. Ojoo Chief Magistrate Mavoko Law Courts delivered on 22nd August, 2024 hereby appeals to this Honourable Court on the following grounds, inter alia;
 1. The learned Trial Magistrate erred in law and in fact by misdirecting herself on the matter of the threshold for the grant of orders of amendment of pleadings and as a result arrived at a ruling that was erroneous when viewed against the backdrop of the facts in issued based on the evidence presented by the parties.
 2. The learned Trial Magistrate erred in law and in fact by totally ignoring the Plaintiff's evidence as presented and replying purely on the first Defendant/Respondent's Replying Affidavit hence arriving at a finding of fact that was wholly against the weight of the evidence tendered in the subject application.
 3. The learned Trial Magistrate erred in law and in fact by holding that the 1st Respondent would be prejudiced by the grant of the Orders sought instead of weighing the opposing interests of



the parties. It is thus manifest from the situation as a whole that the court is clearly wrong in the way she exercised her Judicial discretion such that it in itself resulted in miscarriage of justice.

4. The learned Trial Magistrate error in law and in fact by failing to note that the amendments sought by the Appellant were not meant to overreach but to bring on board the Plaintiff's case which could essentially aid the Court to reach an effectual determination and disposal of the suit on merits: -
 5. The learned Trial Magistrate error in law and in fact by alluding to the issue of joinder of parties when indeed that matter was moot and the said prayer had already been abandoned once the Appellant was made aware that all the proper and necessary parties were already validly before the Court vide an earlier order.
 6. The learned Trial Magistrate error in law and in fact when she failed to exercise her discretion in favour of the Appellant so as to avoid injustice or hardship resulting from accident, inadvertence or the excusable mistake of failing to initially plead his claim with full particulars and specificity. She failed to appreciate that the failure by the Plaintiff to do was not by means intended to evade or otherwise obstruct and/or delay the course of justice.
2. The Appellant seeks the following Orders: -
- a. That this Appeal be allowed and the Ruling delivered on 22/08/2024 be set aside and/or overturned and substituted with an order allowing the Notice of Motion Application dated 1/7/2024 that sought leave of Court to further amend the Plaintiff;
 - b. That costs of this Appeal be awarded to the Appellant.
3. This is the first appeal, the primary role of the court is to re-evaluate, re-assess and re-analyze the evidence on record and decide as to whether the conclusion reached by the learned magistrate was sound, and give reasons either way. This duty was emphasized by the Court of Appeal in *Mbogo and another v Shah* (1968) EA 93 where it was held that;
4. I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matter on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion. It is for the company to satisfy this court that the judge was wrong and this, in my view it has failed to do.”
5. The Appellant submitted that they filed a suit against the Respondents ELC Case No. E78 of 2022 concerning the suit originally unsurveyed residential Plot No. 656 Athi River Mavoko being LR No. 25959 (Mulinge Scheme). It became necessary for the Appellant to further amend the plaintiff to include additional facts and to plead with specificity his claim so as to include particulars of fraud. That the 1st Respondent with the help of the 2nd and 3rd Respondents has already made a title No. IR 2411354 in respect of the same.
6. Order 8 Rule 3 of the Civil Procedure Rules provides for amendment of pleadings with leave of court as follows;
- (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.
- Further, Order 8, rule 5 gives the court the general power to amend.
- 5.



- (1) 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.
7. The Respondent strongly opposed the Appeal and pointed out that the Applicant is guilty of laches. That the amendments sought to introduce allegations of fraud, new parties and a different land reference after close of pleadings and certification of the matter as ready for hearing. That the amendment is an afterthought and meant to delay the suit.
8. Be that as it may, Section 1A of the [Civil Procedure Act](#) provides for the overriding objective of the [Civil Procedure Act](#) and the rules made thereunder and provides as follows:
 - 1A (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
 - (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
 - (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.
9. Section 1B of the same Act, on the other hand provides for the duty of court and states:
 - (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims —
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
 - (e) the use of suitable technology.
10. The proposed amendment according to the Appellant seeks to include additional facts and plead with specificity to the claim. That all these issues need to be fully ventilated and a complete and effectual determination arrived at by the court and therefore the need for the amendments sought herein to be effected before the case goes for full trial.
11. In the case of *Central Kenya Ltd v Trust Bank & 4 Others*, CA No. 222 of 1998, the court stated that, the guiding principle in amendment of pleadings and joinder of parties 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.”
12. On the issue of amendment of pleadings in the case of *AAT Holdings Limited v Diamond Shields International Ltd* (2014) eKLR, the court cited the principles as set out by the Court of Appeal in *Central Kenya Ltd Case No. 222 OF 1998* as shown below;



- (i) That are necessary for determining the real question in controversy.
- (ii) To avoid multiplicity of suits provided there has been no undue delay.
- (iii) Only where no new or inconsistent cause of action is introduced i.e. if the new cause of action does not arise out of the same facts or substantially the same facts as a cause of action.
- (iv) That no vested interest or accrued legal rights is affected; and
- (v) So long as it does not occasion prejudice or injustice to the other side which cannot be properly compensated for in costs.

13. It is quite clear from decided cases that the discretion of a trial court to allow amendments of a Plaintiff is wide and unfettered except it should be exercised judicially upon the foregoing defined principles. In the case of *Isaac Awuondo v Surgipharm Ltd & Another* (2011) eKLR the Court of Appeal had the following to say:

In *Moi University v Vishva Builders Limited*- Civil Appeal No. 296 of 2004 (unreported) this Court said:-

14. The law is now settled that if the defence raises even one bona fide triable issue, then the Defendant must be given leave to defend. In this appeal we traced the history from the commencement of relationship between the parties herein. The dispute arises out of a building contract. In the initial Plaintiff the sum claimed was well over 300 million but this was scaled down by various amendments until the final figure claimed was Shs.185,305,011.30/- We have looked at the pleadings and the history of the matter and it would appear to us that the appellant had serious issues raised in its defence. As we know even one triable issue would be sufficient – see *H.D Hasmani v. Banque Du Congo Belge* (1938) 5 E.AC.A 89. We must however hasten to add that a triable issue does not mean one that will succeed. Indeed, in *Patel v. E.A. Cargo Handling Services Ltd.* [1974] E.A. 75 at P. 76 Duffus P. said:-

“In this respect defence on the merits does not mean, in my view a defence that must succeed, it means as Sheridan, J put it “a triable issue” that is an issue which raises a prima facie defence and which should go to trial for adjudication.”

15. Be that as it may, I have also perused the proposed Amended Plaintiff and I find it seeks to enjoin the 2nd, 3rd and 4th Defendants. The amended plaintiff introduces the element of fraud and particulars therein against all the Defendants thereafter. It also seeks to amend the description of the suit land from Plot No. 656 on LR No. 25959 situated in Athi River, Machakos County to unsurveyed Plot No. 656 now known as on LR No. 25959 situated in Athi River, Machakos County. I find the description similar but clearer and I do not see any prejudice that would be suffered by the Respondent as they will have an opportunity to respond to the amended plaintiff and file any further documents if need be. I find that the amendments make the claim specific and particulars of fraud are given hence the cause of action is not different. I find that the amendments are necessary for the real questions in issues in controversy to be determined. In these circumstances, I find that this application does not contravene Order 1 Rule 8 of the Civil Procedure Rules. I find that this Appeal is merited and I allow the same with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 25TH DAY OF MARCH 2026.

N.A. MATHEKA

JUDGE

