

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ELC CASE NO. 63 OF 2018

PRISCILLA MUNYIVA MATUVAPLAINTIFF

-BETWEEN-

AIMI MA KILUNGU LTD1ST
DEFENDANT

NAZIMA MALIK2ND
DEFENDANT

RULING

1. Before this court for determination is the Notice of Motion dated 22nd October, 2025 wherein the following orders were sought by the 2nd Defendant/Applicant:-

1) THAT leave be granted to the 2nd Defendant/Applicant to amend its Statement of Defence dated 27th January 2023 on the terms set out in the draft annexed herein.

2) THAT the costs of the application be provided for.

2. The application is premised on the grounds appearing on its face in addition to the supporting affidavit of Nazima Malik sworn on even date. She averred that she is desirous of amending her Statement of Defence and that the facts she intends to introduce by way of amendment are vital to fair determination of the case. She further averred that the Plaintiff will not suffer any prejudice should the application be allowed.

3. Opposing the application, the Plaintiff filed a replying affidavit that was sworn on her behalf by Francis M. Masika Advocate on 18th November 2025. It was contended that the instant application is frivolous and an abuse of the court process. It was further contended that the draft annexed defence does not raise any new issues except mere denials. That the issues concerning whether the 2nd

Defendant was wrongly joined in the suit, in addition to whether a cause of action lies against her was res judicata following the ruling delivered by this court on 8/5/2025. Counsel averred that the 2nd Defendant has already caused great delay in the matter and allowing the application will cause fresh pretrial directions which the 2nd Defendant has never been ready to comply with.

4. The deponent urged that if the court should be inclined to allow the application, then thrown away costs of Kshs.50,000/= should be paid or otherwise the same be dismissed with costs.
5. The 2nd Defendant/Applicant filed a further affidavit sworn on 21st January, 2026. It was averred that the principles of natural justice and the right to a fair hearing entitle the Applicant to bring any application which is necessary to protect her interests in the effective disposal of the case. That the Plaintiff has previously benefitted from the court's discretion on two separate occasions when amending her plaint.
6. The Applicant contended that she was only able to make the application in October considering that she was joined in the suit four years after it was filed and the hardship presented in finding the relevant documents. It was further contended that in its ruling of 8/5/2025, the Court solely made a finding that the Applicant was a necessary party to the suit. That no determination as to whether the Plaintiff has a valid cause of action was made and hence the issue is not res judicata.
7. The deponent averred that should the application be allowed, then she is intent in setting the matter down for hearing without delay. She contended that the thrown away costs being sought are unreasonable as the Applicant is entitled by law to make the application.
8. The 1st Defendant did not file any reply to the application.

9. The application was canvassed by way of written submissions. In the Applicant's submissions dated 21st January, 2026, Counsel submitted that the proposed amendments are geared towards responding to each of the Plaintiff's allegations and the particulars of illegality alleged against the 2nd Defendant. That absent of such amendments, the 2nd Defendant would be unfairly constrained from placing before the court her full and complete answer to serious allegations that go to the core of liability. It was submitted that the amendment sought is in the interest of substantive justice.
10. Relying on the case of **Central Kenya Ltd v Trust Bank Ltd & 5 others [2000] KECA 367 (KLR)**, Counsel submitted that the proposed amendments will not occasion any prejudice or injustice against the Plaintiff.
11. In the Plaintiff's submissions dated 28th January 2026, Counsel reiterated the averments made in the replying affidavit that the application herein is a delaying tactic by the 2nd Defendant. That the matter had been set down for pretrial directions on several occasions but no action was taken by the 2nd Defendant after the issue of amendment of pleadings was raised.
12. Relying on the case of **Thiong'o v Unaitas Sacco Society Limited [2025] KEELRC 272 (KLR)**, Counsel submitted that the application had been brought in bad faith and that the proposed amendments completely alter the line of defence by the 2nd Defendant. It was urged that the application should be dismissed with costs.
13. The sole issue for determination is whether the 2nd Defendant ought to be granted leave to amend her statement of defence dated 27th January, 2023.
14. The amendment of pleadings is a discretionary power vested with the court. Section 100 of the Civil Procedure Act outlines as follows: -

‘The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a

suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.’

15. Order 8 Rule 3(1) of the Civil Procedure Rules sets out as follows: -

‘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.’

16. The principles that govern the exercise of such discretion were elucidated by the Court of Appeal in Central Kenya Ltd v Trust Bank Ltd [2000] 2 EA 365 (CAK) where it was observed as follows:-

“The amendment of pleadings and joinder of parties was aimed at allowing a litigant to plead the whole of the claim he was entitled to make in respect of his cause of action. A party would be allowed to make such amendments of pleadings as were necessary for determining the real issue in controversy or avoiding a multiplicity of suits provided (i) there had been no undue delay, (ii) no new or inconsistent cause of action was introduced, (iii) no vested interest or accrued legal right was affected, and (iv) the amendment could be allowed without injustice to the other side. Accordingly, all amendments should be freely allowed at any stage of the proceedings, provided that the amendment or joinder did not result in prejudice or injustice to the other party that could not be properly compensated for in costs; Beoco Ltd v Alfa Laval Co Ltd [1994] 4 All ER 464 adopted.”

17. In the case of Institute for Social Accountability & Another v Parliament Of Kenya & 3 others [2014] eKLR, the Court aptly held as follows: -

“17. The issue of amendment of pleadings is not novel and has been the subject of numerous court decisions, the common denominator being that as a general principle, courts will normally allow amendment of pleadings at any stage of the proceedings if it can be done without occasioning injustice or prejudice to the other party and which prejudice can be compensated by an award of costs. See generally Eastern Bakery v Castelino (1958) EA 461; Ochieng and Others v First National Bank Of Chicago CA Civil Appeal Number 149 of 1991, Kenyatta National Hospital v Kenya Commercial Bank Ltd & Another [2003] 2 EA.

18. The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings.

19. Rule 18 of the Rules clearly stipulates that the court may permit an amendment at any stage of the proceedings. The court will normally allow parties to make such amendments as may be necessary for determining the real questions in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, no new or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that the amendment can be allowed without an injustice to the other side.”

18. The proposed amendments herein as demonstrated in the annexed draft marked as Exhibit “NM-1” seek to elaborate the line of defence taken by the 2nd Defendant that she is a stranger to any transaction that occurred between the Plaintiff and the 1st Defendant and the suit property was never transferred in her name.

19. This line of defence does not alter the substance of the 2nd Defendant’s case. In fact, the proposed amendments seek to completely and fully articulate her defence to the Plaintiff’s claim. The Plaintiff has not demonstrated any mischief or prejudice which the proposed amendments will introduce. In the end, the court will be assisted in determining the real matters in controversy if the amendment sought is granted.

20. To buttress the above position, the Court in **Muleya v Common Market for Eastern and Southern Africa and another [2003] 1 EA 173 (COMESA)** held as follows: -

“In light of all the above, the conclusion is inescapable that the rule to be followed by the court is that an amendment to a party’s pleadings will be allowed if the amendment seeks only to amplify, elaborate, particularize or elucidate on a matter that is already contained in the pleading that is sought to be amended. Conversely, an amendment that seeks to introduce a brand new matter altogether (such as a new cause of action, or a new relief), is to be denied.”

21. The proposed amendments are material to the suit in that they bring out clarity in the 2nd Defendant’s line of defence. Accordingly, the instant application is merited and is allowed. The Applicant shall amend the defence within 14 days.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS

THIS 16TH DAY OF APRIL, 2026.

IN THE PRESENCE OF:

Ms. Nyangweso for Ms. Malik for 2nd Defendant.

Court assistant – Deodata.

ORIGINAL