



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ELC CASE NO. E001 OF 2020

**MAANZONI OWNERS ASSOCIATION (*Suing through its officials*
Isaac Kimulu- Chairman, Robert Mugo Wa Karanja- Treasurer
Susan Wanjiku Ngigi- Secretary).....**
PLAINTIFF

VERSUS

PAMELA TUTUI.....1ST
DEFENDANT
THE COUNTY PHYSICAL PLANNER,
MAVOKO SUB-COUNTY.....2ND
DEFENDANT
THE COUNTY GOVERNMENT OF MACHAKOS.....3RD
DEFENDANT

RULING

1. This ruling concerns the notice of motion dated 28 November 2023, filed by the 1st defendant, and it is presented as being

made in accordance with **Sections IA, 1B, 3A** of the **Civil Procedure Act**, and **Order 51** of the **Civil Procedure Rules**.

She seeks the following orders from this court: -

a. Spent.

b. THAT the honourable court be pleased to grant leave to the 1st defendant to amend the statement of defence dated 28 September 2020 and file a supplementary list of documents.

c. THAT the draft amended statement of defence and counterclaim attached herewith, together with the supplementary list of documents, be deemed as duly filed and served upon payment of the prerequisite court fees.

d. THAT the costs of this motion.

2. The motion is supported by the grounds therein as well as the affidavit sworn on the instant date by the 1st defendant, in which she states that it has become necessary to amend her pleadings to provide particulars of special loss and damages to the counterclaim and to include additional prayers. She informs the court that no prejudice will be caused to the other parties. Furthermore, it was necessary for her to file a supplementary list of documents. She has

submitted the relevant documents for the court's consideration.

3. Only the plaintiff contested the motion through the replying affidavit of James Kambo, sworn on 19 March 2024. In summary, the plaintiff opposes the motion on three grounds: firstly, that the motion was filed late contrary to the provisions of **Order 8 Rule 5** of the **Civil Procedure Rules**; secondly, that the 1st defendant seeks to introduce new issues and a fresh cause of action through the counterclaim, which would be prejudicial to the plaintiff; and thirdly, that the supplementary list of documents is akin to the introduction of new evidence, as the 1st defendant seeks to introduce fresh issues and a new cause of action.
4. The motion was canvassed through a written submission filed by **M/s. J.A. Guserwa & Co. Advocates** for the 1st defendant dated 21 November 2025, and by **M/s. Prof Albert Mumma Co. Advocates** dated 25 November 2025. Accordingly, after thoroughly examining the motion, including its grounds, the parties' affidavits, the rival submissions, together with the provisions of law and judicial precedents relied upon, which shall be taken into consideration in the analysis and determination of this matter, the sole issue for determination is **whether the motion is merited**. We shall proceed.

5. The legal framework governing the amendment of pleadings is set out in our **Order 8, Rule 5(1)** of the **Civil Procedure Rules**, which states:

“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.”

6. The question of amending pleadings is not new and has been addressed in many court rulings, and several court decisions have been relied upon by the parties in this regard, including **Kyungu (Suing on behalf of Danie Kyungu Muasya) v Kivuva & another [2022] KEELC 14971 (KLR)**, **Elijah Kipngeno Arap Bii v Kenya Commercial Bank Limited (2013) KECA 354 (KLR)**, and **Joseph Ochieng & 2 others Trading as Aquiline Agencies v First National Bank of Chicago (1995) KECA 31 (KLR)**. From these court decisions, it emerges that the decision to grant or deny leave to a party to amend pleadings is at the court's discretion, based on law, evidence, and reason.

7. Typically, the court permits amendments deemed necessary to ascertain the real issues in dispute or to prevent the proliferation of lawsuits, provided there has been no undue delay, no new or conflicting cause of action is introduced, and no vested interest or accrued legal right is compromised. Moreover, the amendment may be granted without causing injustice to the opposing party. The general rule is that courts typically permit amendments at any stage of proceedings, provided they do not cause injustice or prejudice to the opposing party. If there is prejudice, it can often be offset by an award of costs.
8. The purpose of amending pleadings is to allow the parties to modify their pleadings so that litigation proceeds based on the actual facts and the intended relief, rather than on inaccurate assertions or claims. The authority to amend enhances the court's ability to focus on the case's substantive merits rather than being constrained by procedural formalities.
9. The first respondent's replying affidavit has presented several objections, some of which this court finds frivolous, as it is apparent that the amendments do not introduce new issues or a fresh cause of action through the counterclaim. There was no basis for laying such a claim. Even if there is a

delay in filing the instant motion as asserted by the plaintiff, the proceedings are very much alive, entitling any party to apply for an amendment of pleadings before judgment. Furthermore, the plaintiff will have an opportunity to file an amended plaint and will not suffer any prejudice.

10. Concerning the submission of additional documents, it is the considered view of this court that, as the matter has not yet proceeded to a full hearing. These additional documents are pertinent to substantiating the assertions made in the 1st defendant's counterclaim and will have a significant impact on the just and equitable resolution of the case. Furthermore, the plaintiff will not be prejudiced in any way, as leave will be granted to file supplementary documents.

11. Ultimately, this court finds that such reliefs sought are merited. For reasons, this is an interlocutory motion; costs shall be in the cause. Consequently, the court hereby issues the following final orders:

a. The 1st defendant shall, within 21 days of the date hereof, file and serve the amended defence and counterclaim on all the parties.

- b. Thereafter, the other parties shall be at liberty to file their amendments within 21 days of service.***
- c. All parties are hereby granted leave to file supplementary lists of documents within 45 days hereof and to file and serve an indexed and paginated supplementary bundle of documents.***
- d. A mention date shall be issued to confirm compliance.***
- e. Costs shall be in the cause.***

Orders accordingly.

Delivered and Dated at Machakos this 28th day of April, 2026.

**HON. A. Y. KOROSS
JUDGE
28.04.2026**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant

Miss Guserwa for 1st defendant/respondent.

Miss Alma Njeri for plaintiff.

ORIGINAL