



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT KAJIADO

ELC CASE NO. E004 OF 2023

**SHABAN HASSAN LEPOSO & LUCY NYAMWIZA
MUTAGURWA**

(Suing as Administrators of the Estate of the late

HASSAN IDI MALAMBU.....PLAINTIFF

VERSUS

KEZIAH MUMBI NGURE.....DEFENDANT

RULING

1. Before Court for determination is the Application dated 18th June 2025. It seeks that the Defendant/Applicant be granted leave to file an Amended Defence, list of documents, witness statements in light

of additional evidence gathered and be allowed to cross examine the Plaintiffs. It is premised on the grounds set out in the Application and the Supporting Affidavit.

2. The Defendant/Applicant avers that on 6th May 2025, she obtained a Survey Map Sheet No. 148/3/9SW, which indicated that the titles and subdivisions of parcels LR No. Ngong/Ngong/95648-95659 had been cancelled on 4th March 2025 pursuant to a Ruling and Court Order by Justice R. Nyakundi in Succession Cause No. 64 of

2016 - In the Matter of the Estate of Iddi Malambu Hassan (Deceased).

3. The Applicant contends that at the time she purchased the suit land from the Plaintiff on 10th February 2021, she was unaware that the titles and subdivisions of the suit land had previously been invalidated by Court Order on 19th March 2018, and that the Plaintiff was duly aware of this material fact but withheld it from her. She therefore urges that it is in the interests of justice that she is allowed to file additional documents and be afforded an opportunity to recall and cross-examine the Plaintiffs.

4. The Respondents opposed the application and sought its dismissal on the basis that the Applicant had failed to produce the draft Amended Defence. They argued that, without it, it was impossible to determine the scope of the proposed amendments or whether those amendments would fundamentally alter the nature of the suit. The Respondents further contended that the cancellation of the title in 2025 had no bearing on the suit, which concerned a claim for specific performance.
5. The Respondents explained that the cancellation of the mutation form on 4th March 2025 was carried out at the direction of the Land Registrar to rectify minor errors arising from subdivisions made after the Ruling dated 19th March 2018 in Succession Cause No. 64 of 2016 (formerly 987 of 2008)- In the matter of the Estate of Iddi Malambu Hassan. That Ruling annulled the Grant issued to Ali Montet and Hassan Idi Malambu (deceased) dated 10th November 2009, and directed that all subdivisions emanating from LR/Ngong/Ngong/27038 be cancelled and reverted to the Estate of the deceased. The Ruling also replaced Ali Montet with Shaban Edi Leposo as a joint administrator. Pursuant to this Order,

all titles

and subdivisions were cancelled and reverted accordingly, after which all subdivided titles were registered in the names of the newly appointed joint administrators, namely Hassan Idi Malambu (deceased) and Shaban Edi Leposo. The estate was subsequently subdivided and distributed by way of the confirmed grant dated 1st November 2018, under which LR/Ngong/Ngong/96569 and LR/Ngong/Ngong/96575 (the subject matter of this suit) were allocated to Hassan Idi Malambu (deceased), who later sold them to the Applicant on 10th February 2020.

6. Upon learning of the cancellation, the Respondent wrote to the Land Registrar on 22nd May 2025 requesting a reversal. This was duly effected, and a road was carved out along the upper portion of the parcel LR/Ngong/Ngong/27038 (the mother title) to provide access to the quarry situated behind it.

7. In light of the foregoing, the Respondents maintained that the Applicant's assertion that the land was sold to her without full disclosure of material facts was unfounded. Further, that the issues raised in the application had been overtaken by events,

had no

impact on the suit, and that the application ought to be dismissed with costs, with the hearing of the Defence allowed to proceed.

8. This application was canvassed by way of written submissions.

9. The Defendant/Applicant submitted that she was entitled to a fair hearing and that the Court had the discretion to grant leave to amend pleadings as per **Order 8 Rule 3 Civil Procedure**

Rules as

held in **Central Bank Ltd vs Trust Bank Ltd (2000) 2 EA 365, Elijah**

King'eno Arap Bii v Kenya Commercial Bank Ltd [2013] eKLR

and citing **Susan Wavinya Mutavi vs Isaac Njoroge & Another**

[2020] eKLR on reopening of cases. Further, it was submitted that the Plaintiff acknowledged the cancellation and claimed that he had sought a reversal of the same, but no evidence was placed before court as evidence that the said reversal was effected and that the cancellation on 4th March 2025 was due to a Court order and not rectification of mutation forms as claimed. Additionally, that the cancellation information ought to have been disclosed when the property was being purchased, but this was never done until the

Defendant's husband 'landed' on that information in 2025 while conducting due diligence.

10. The Respondents vehemently opposed the application submitting that the cancellation was mutation form for parcel No. 95648 and the same had been rectified therefore having no bearing to the case. Additionally, the cancellation had no bearing on the cause of action, which was specific performance and that any amendment at this stage would be prejudicial to them citing **Too v Tum [2014]**

KEELC

512 (KLR) and Attorney General vs Zinj Limited [2021] eKLR

among others. It was also submitted that the case should not be reopened because the information claimed by the Defendant was irrelevant in the case and would only lead to unnecessary delay of the case adding that the additional evidence would have been obtained by the Defendant had they exercised due diligence. The application should thus be dismissed.

11. Having considered the application and rival submissions, the sole issue for determination is whether the Defendant/Applicant should be granted leave to amend the defence and recall the Plaintiffs for cross examination.

12. The jurisdiction of this Court to grant leave to amend pleadings is

well established by **Order 8 Rule 3 (1) of the Civil Procedure Rules:**

...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. Courts have held that amendment of pleadings should generally be allowed at any stage of proceedings, provided that the amendment is necessary for the purpose of determining the real questions in controversy, and that no injustice is caused to the other party that _____ cannot be compensated by way of costs. See **Pravin Bowry v John Ward & another [2015] KECA 215 (KLR)**.

14. It cannot be gainsaid that the Applicant should have attached the draft defence. Section 1 A and B of the Civil Procedure Rules places on the court a responsibility to give effect to the overriding objectives which include; the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the

respective parties. The court is called upon to delve deeper to determine what the ends of justice would require in each circumstance.

15. It is not in dispute that the Plaintiff's claim seeks specific performance in respect of parcels LR/Ngong/Ngong/96569 and LR/Ngong/Ngong/96575, both of which emanate from the parent title LR/Ngong/Ngong/95648. The Applicant contends that on 4th March 2025, parcels LR/Ngong/Ngong/95648-95659 were cancelled. Given that parcel 95648 constitutes the parent title from which the suit parcels 96569 and 96575 were subdivided, and forms the substratum of this suit, it is necessary that the Applicant be granted leave to file the amended defence so that all the facts are before the court. Indeed the court notes that there are serious contestation of facts which can only be resolved after hearing. It is also necessary that the Defendant be presented with an opportunity to recall and cross examine the Plaintiffs.

16. Consequently ,the application is allowed in the following terms

- a. Leave to Defendant to file amended Defence within 21 days and corresponding leave to the Plaintiffs to file a response within 21 days

- b. Either of parties may file any additional documents as shall be necessary
- c. The Plaintiff shall be recalled for cross examination
- d. The Plaintiffs are to have to have the costs of this application

**Dated, Signed and Delivered virtually at Kajiado this
16th day of April 2026.**

JUDY OMANGE

JUDGE

IN THE PRESENCE OF:

Ms. Chepngeno for the Defendant.

Ms. Nyaga for Ms. Asli Osman for the

Plaintiff. Peter – Court Assistant.