

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC SUIT NO. 34 OF 2020**

**VERONICA KAGORE MAINA:.....PLAINTIFF/APPLICANT**

**VERSUS**

**LYDIAH NYAWIRA WANGU:.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**THE REGISTER OF LANDS MACHAKOS LANDS  
REGISTRY:.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**THE ATTORNEY GENERAL:.....4<sup>TH</sup> DEFENDANT/RESPONDENT**

**RULING**

The application is dated 7<sup>th</sup> July 2025 and is brought under Article 159 2(d) of the Constitution of Kenya 2010, Order 8 Rule 3(1), 5(1), Order 51 Rules 1,12 and 13 sections 1A, 1B and 3A The Civil Procedure Act seeking the following orders;

1. THAT the Applicant be granted leave to amend its plaint as set out in the draft amended plaint annexed thereto.
2. THAT the Applicant be granted leave to bring in an intended 2<sup>nd</sup> Defendant/Respondent as a party to this instant suit.
3. THAT the draft amended plaint attached to the application be deemed as duly filed and served upon payment of requisite Court fees.
4. THAT costs of this Application be in the cause.

It is supported by the annexed Affidavit of VERONICA KAGORE MAINA and on the following grounds that leave to amend the plaint is necessary to guide the Court on the determination of the suit herein. That for the purpose of determining the question in controversy between the parties this application for leave to amend Plaintiff is necessary. That the Applicant be granted leave to bring in the intended 2<sup>nd</sup> Defendant/Respondent as a party to this instant suit as he lays claim on the suit property in this instant suit and thus is crucial party in this instant suit. That there were fundamental facts that were inadvertently and erroneously omitted in the Plaintiff and which need to be corrected for clarity purposes and to be specifically pleaded. That the proposed amendments are necessary as it shall bring to the fore all the real questions in issue. That the proposed amendments will not occasion any prejudice to the Defendants as the hearing of the suit has not commenced. That the intended 2<sup>nd</sup> Defendant/Respondent herein is a crucial party to this instant suit as he lays claim of the suit property. That the time allowed under the Civil Procedure Act and its Rules 2010 for amendment of pleadings has since lapsed. That it is in the interest of justice that the Plaintiff's pleadings are clearly defined. That it is in the interest of justice to have the Plaintiff amended for the true and just dispensation of justice

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.*

The Respondent strongly opposed the Application and pointed out that the Applicant is guilty of laches. That there have no objection to the joinder but some of the amendments sought to change the nature of the original claim. That the amendment is an afterthought and meant to cure adverse findings of an earlier court ruling.

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.*

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.*

The proposed amendment according to the Applicant seeks to reflect the true state of affairs which the Applicant seeks to rely on. That the amendments shed more light into the facts and the merit of the suit. include additional facts and plead with specificity to the claim. That all these issues need to be fully ventilated and the Respondent will have the opportunity to cross examine on the same during the full trial.

In the case of Central Kenya Ltd vs 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.”*

On the issue of amendment of pleadings in the case of AAT Holdings Limited vs 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.*

It is quite clear from decided cases that the discretion of a trial court to allow amendments of a Plaint is wide and unfettered except it should be exercised judicially upon the foregoing defined principles. In the case of Isaac Awuondo vs

Surgipharm Ltd & Another (2011) eKLR the Court of Appeal had the following to say:

In MOI UNIVERSITY vs VISHVA BUILDERS LIMITED - Civil Appeal No. 296 of 2004 (unreported) this Court said:-

*“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.A.C.A 89. We must however hasten to add that a triable issue does not mean one that will succeed. Indeed, in Patel vs. 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.”*

Be that as it may, I have also perused the proposed Amended Plaintiff and I find it seeks to enjoin the 2<sup>nd</sup> Defendants. The amended plaintiff introduces the element of particulars of the claim therein against the Defendants. 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. 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 8 of the Civil Procedure Rules. I find that this Application is merited and I allow the same. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 29<sup>TH</sup> DAY OF APRIL 2026.**

**N.A. MATHEKA**

**JUDGE**

ORIGINAL