

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 114 OF 2016

CHRISTOPHER KABAU KIAI

PLAINTIFF

VERSUS

NELSON NJUGUNA MWANGI

DEFENDANT

RULING

1. What is before the Court for determination is the Plaintiff's Notice of Motion application dated 29th October 2025 in which he seeks the following Orders:

a) The Plaintiff/Applicant be given leave to amend his plaint.

b) That the amended Plaint be duly filed upon payment of the requisite fees.

ELC CASE NO. 114 OF 2016

Ruling

c) That the costs of this application be provided for.

2. The application is premised on grounds on its face and on the Plaintiff's supporting affidavit. He avers that the Plaintiff filed on his behalf by his previous advocates, Njeru, Nyaga & Company Advocates does not bring out all matters in dispute which include non-payment of rent by the Defendant for the period that he has been in occupation of the suit property. Further, that the Defendant was convicted of the alternative charge of handling stolen goods and not store breaking and committing a felony as the Plaintiff indicates. He reiterates that the Defendant will not suffer prejudice if the amendments are allowed.
3. In opposition, the Defendant filed a replying affidavit in which he avers that the Plaintiff has not provided any sufficient reason why he seeks to amend his Plaintiff ten years after instituting this suit and given that he had an opportunity to make amendments when the Court allowed

him to file a reply to the amended Defence, which was filed on 23rd May 2017 and in his Defence to the Counterclaim by the Defendant but he failed to do so.

4. He contends that the Plaintiff raises the question of trespass while the proposed amendments not only introduces a totally new cause of action, but also substantially changes the fundamental character of the suit from one of trespass to one of ownership and rent. Further, that Honourable Lady Justice Lucy Mbugua had already made a Ruling on the issue of further amendments and /or addition of further evidence and denied the Defendant an opportunity to file further documents. He points out that pleadings had closed.
5. He reiterates that the proposed amendments are time barred to the extent that the Plaintiff introduces a new paragraph 5A which alleges that the Defendant was in occupation of the suit premises since the year 2011 and seeks for rent from that time.

6. The application was canvassed by way of written submissions.

Submissions

7. The Plaintiff urges the Court to allow his proposed amendments in accordance with Order 8 Rule 3 of the Civil Procedure Rules. To buttress his averments, he relied on the following decisions: **Central Kenya Limited v Trust Bank Limited & 5 others [2002] eKLR** and **Daykio Plantations v Galba Mining Limited & 4 others (Civil Suit 31 of 2016 & Civil Case 230, 238 & 237 of 2015 & 499 of 2016 (consolidated) [2025] KEHC 4504 (KLR) Commercial and Tax (2 April 2025)**.

8. On his part, the Defendant submits that the Plaintiff's attempt to explain the delay in seeking amendments at this juncture is that his previous Advocates made an error in the Plaintiff, which reason does not hold water as his current advocate on record filed his Notice of Change of Advocate on the 22nd January 2018, which is over eight (8) years ago.

Further, that the amendments seek to introduce a new cause of action which is time barred by statute thus offends the provisions of the Limitation of Actions Act.

9. He also submits that the application is grounded on bad faith and to fill gaps in evidence as it is solely informed by the Plaintiff's attempt to sanitize his submission as he did not plead the prayers that he canvasses about therein. Further, that the amendments sought are inconsistent with the original cause of action, whose effect is reframing the case and thus denying him a defense.
10. To buttress his averments, the Defendant relied on the following decisions: **Coffee Board of Kenya v Thika Mills Limited & 2 others [2014] eKLR; Mwangi S Kaimenyi v Attorney General & another [2014] eKLR; Kassam v Bank of Baroda (Kenya) limited [2002] KEHC 1109(KLR); Graham Rioba Sagwe & 2 others v Fina Bank Limited & 5 others [2017] eKLR and Eastern Bakery v Castelino [1958] 1 EA 461.**

ELC CASE NO. 114 OF 2016

Ruling

Analysis and Determination

- 11.** Upon consideration of the instant Notice of Motion application including the respective affidavits and rivaling submissions, the only issue for determination is whether the Plaintiff should be granted leave to amend his *Plaint*.
- 12.** The Plaintiff contends that his previous advocate did not bring out all the issues for determination, including non-payment of rent by the Defendant for the period that he has been in occupation of the suit property.
- 13.** The Defendant has pointed out to the Court that the Plaintiff's current advocate on record filed his Notice of Change of Advocate on the 22nd January 2018, which is over eight (8) years ago. He contends that the amendments sought will change the character of the suit from that of trespass to one of ownership and rent, which is statute barred by dint of the Limitation of Actions Act. Further, that the call for amendments is a tactic to fill in evidence.

14. The Court has discretion to grant a party leave to amend pleadings. Order 8 Rule 3 (1) of the Civil Procedure Rules provides that:

“(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.”

15. Further, Order 8 Rule 5 (1) of the Civil Procedure Rules provides as follows:

“(1) For purposes of determining the real question in controversy between the parties, or of correcting any defector 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.”

16. In Central Kenya Ltd v Trust Bank Ltd & 5 others Civil Appeal No.222 of 1998 [2000] eKLR, the Court of Appeal stated that:

“... the guiding principle in applications for leave to amend 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.....”

17. The Court of Appeal also stated as follows in the case of Joseph Ochieng & 2 others Trading as Aquiline Agencies v First National Bank of Chicago [1995] eKLR;

“.....if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the plaintiff will not be allowed to reframe his case or his claim if by an

amendment of the plaint the Defendant would be deprived of his right to rely on Limitation Acts but subject however to powers of court to still allow such an amendment notwithstanding the expiry of current period of Limitation: that the court has powers even (in special circumstances) to allow an amendment adding or substituting a new cause of action if the same arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to seek the amendment.”

18. In this instance, I note the Plaintiff has sought leave to amend his
Plaint claiming his former advocate failed to include certain issues in dispute. I however note that the current Advocate has been representing him for around eight (8) years. On perusal of the Court record, I note on the 6th October, 2025, the Plaintiff testified as PW1 and was even cross examined by the Defendant’s Counsel and reexamined by his Advocate. During cross examination, he confirmed that he had not pleaded anything to do with rent payment. Further, it

emerged that there had been a related criminal case at Kibera, where the accused person had been discharged. I note, issues of renting the suit premises to tenants also emerged during cross examination.

19. After the hearing, the Plaintiff has now filed the instant application where he seeks to include prayers for payment of rent including mesne profits as well as demolition of structures on the suit property. His main reason for seeking an amendment too late in the day is that his erstwhile Advocate did not include the same in the pleadings. From the Plaintiff, it is clear that the cause of action in this matter arose in 2012 and he now seeks to include issues touching on tort whose limitation period is between three (3) and six (6) years by dint of the Limitation of Actions Act. I opine that the amendments sought will change the character of the suit, which is statute barred under the Limitation of Actions Act.

20. Based on the facts before me while relying on the legal provisions cited and associating myself with the decisions

quoted, I find that the amendment sought has been brought with undue delay and no proper explanation has been proffered except for blaming an erstwhile Advocate. Further, I find that the Plaintiff seeks to introduce an inconsistent cause of action and intends to patch his evidence and this is malafides and will actually cause an injustice to the Defendant as it will change his Defence. In the foregoing, inasmuch as an amendment can be allowed at any time, I am unable to grant the Plaintiff leave to amend his Plaintiff.

21. In the circumstances, I find the instant Notice of Motion application unmerited and will disallow it.

22. Costs will be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
5TH DAY OF MAY, 2026**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Mombo for Defendant

ELC CASE NO. 114 OF 2016

Ruling

Court Assistant: Joan

ORIGINAL