



REPUBLIC OF KENYA



**Criticos & another v AIC Makutano & 66 others (Land Case 3 of 2024)  
[2025] KEELC 5966 (KLR) (Environment and Land) (29 August 2025) (Ruling)**

Neutral citation: [2025] KEELC 5966 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
LAND CASE 3 OF 2024  
EK WABWOTO, J  
AUGUST 29, 2025**

**BETWEEN**

**BASIL CRITICOS ..... 1<sup>ST</sup> PLAINTIFF**

**COMPANY LIMITED ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**AIC MAKUTANO ..... 1<sup>ST</sup> DEFENDANT**

**MUBUYUNI PRIMARY SCHOOL ..... 2<sup>ND</sup> DEFENDANT**

**DAVID KIOKO MUTUA ..... 3<sup>RD</sup> DEFENDANT**

**ALPHONCE MWAKA MASIKA ..... 4<sup>TH</sup> DEFENDANT**

**THOMAS MUTANGA ..... 5<sup>TH</sup> DEFENDANT**

**RONALD MUTISO MUTUA ..... 6<sup>TH</sup> DEFENDANT**

**RUTH MKUMBULU LELEWU ..... 7<sup>TH</sup> DEFENDANT**

**REBECCA NJICHA MTUA ..... 8<sup>TH</sup> DEFENDANT**

**OTHANIEL MNENE ..... 9<sup>TH</sup> DEFENDANT**

**ANDREW JUMAMOSI MASAMO ..... 10<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 11<sup>TH</sup> DEFENDANT**

**ADRIANA SHALI MSAFARI ..... 12<sup>TH</sup> DEFENDANT**

**MARION ATIENO MOON ..... 13<sup>TH</sup> DEFENDANT**

**DUNCAN JACOB MAGHAGHA ..... 14<sup>TH</sup> DEFENDANT**

**JANE WAITHIRA KAIRO ..... 15<sup>TH</sup> DEFENDANT**



JAMES FRED NEWTON WANDERA .....	16 <sup>TH</sup> DEFENDANT
MBUYUNI WOMEN GROUP ORGANISATION .....	17 <sup>TH</sup> DEFENDANT
SABASTIAN LETIMIANE MWACHILA .....	18 <sup>TH</sup> DEFENDANT
PETRO CHIKIRA EDWARD .....	19 <sup>TH</sup> DEFENDANT
EDWARD RASHID MAKORE .....	20 <sup>TH</sup> DEFENDANT
JACKSON MATANO FUNDI .....	21 <sup>ST</sup> DEFENDANT
NZIOKI MUTUA MBULU .....	22 <sup>ND</sup> DEFENDANT
BAHATI KINYOKA .....	23 <sup>RD</sup> DEFENDANT
PROSTUS A SEBORU .....	24 <sup>TH</sup> DEFENDANT
MUSA SALERI FUNDI .....	25 <sup>TH</sup> DEFENDANT
JOSPEH SALERI FUNDI .....	26 <sup>TH</sup> DEFENDANT
DENNIS MWANGEKA MOMBO .....	27 <sup>TH</sup> DEFENDANT
JANET CHILUMO MBWANA .....	28 <sup>TH</sup> DEFENDANT
PASCAL SIO MTULA .....	29 <sup>TH</sup> DEFENDANT
MARTIN MRAMBA .....	30 <sup>TH</sup> DEFENDANT
NUHU LAYONI ABDULRAHAMAN .....	31 <sup>ST</sup> DEFENDANT
MWANATUMU HAMISI .....	32 <sup>ND</sup> DEFENDANT
JARED ONYANSI NYAUNDI .....	33 <sup>RD</sup> DEFENDANT
CLEMENT LENJO .....	34 <sup>TH</sup> DEFENDANT
ANNABEL RADUMA OJOO .....	35 <sup>TH</sup> DEFENDANT
LIVERSON MARORO .....	36 <sup>TH</sup> DEFENDANT
LINNET NGELE IDAWO .....	37 <sup>TH</sup> DEFENDANT
MWAKULOMBA P SHETE .....	38 <sup>TH</sup> DEFENDANT
JOSEPH M MWACHILA .....	39 <sup>TH</sup> DEFENDANT
GODWIN MWITI MUGIRA .....	40 <sup>TH</sup> DEFENDANT
ELINA JOHANA MWACHIA .....	41 <sup>ST</sup> DEFENDANT
CHALLA CHEMICALS INTERNATIONAL LIMITED .....	42 <sup>ND</sup> DEFENDANT
DENIS N MUNYI .....	43 <sup>RD</sup> DEFENDANT
MICHAEL WISO .....	44 <sup>TH</sup> DEFENDANT
ALFRED ISAACK MNYANYA .....	45 <sup>TH</sup> DEFENDANT
CORNEL KINYILI KONGO .....	46 <sup>TH</sup> DEFENDANT
CAROLINE EDINA ATIENO ADHOLA .....	47 <sup>TH</sup> DEFENDANT



JOHN J SWAI .....	48 <sup>TH</sup> DEFENDANT
JOHN MUTUA MWANGI .....	49 <sup>TH</sup> DEFENDANT
MARK NGWATI MBITHI .....	50 <sup>TH</sup> DEFENDANT
CHEMOMOBO TECLAH MUKHEBET .....	51 <sup>ST</sup> DEFENDANT
ERASTUS A MAROO .....	52 <sup>ND</sup> DEFENDANT
PAUL MWASARU MWAZUMBO .....	53 <sup>RD</sup> DEFENDANT
JESMILY WAKESHO MWAZUMBO .....	54 <sup>TH</sup> DEFENDANT
NIORAM HOLDINGS LIMITED .....	55 <sup>TH</sup> DEFENDANT
JAPHET MNDAMBO BASHARI .....	56 <sup>TH</sup> DEFENDANT
TOLOWA RAMAITA .....	57 <sup>TH</sup> DEFENDANT
RENNISON A MWADIME .....	58 <sup>TH</sup> DEFENDANT
RUTH KAMEME .....	59 <sup>TH</sup> DEFENDANT
JACKSON KIMIRI MSUYA .....	60 <sup>TH</sup> DEFENDANT
MATENGE K NGAU .....	61 <sup>ST</sup> DEFENDANT
MUTUA MBITHI MBURU .....	62 <sup>ND</sup> DEFENDANT
EPHRAIM NGORIO SIMEON .....	63 <sup>RD</sup> DEFENDANT
BENSON KISOMBE MSULA MBEDE .....	64 <sup>TH</sup> DEFENDANT
LAND SETTLEMENT FUND BOARD OF TRUSTEES (FORMERLY KNOWN AS THE SETTLEMENT FUND TRUSTEES) .....	65 <sup>TH</sup> DEFENDANT
THE CHIEF LAND REGISTRAR .....	66 <sup>TH</sup> DEFENDANT
THE DISTRICT LAND REGISTRAR, TAITA TAVETA .....	67 <sup>TH</sup> DEFENDANT

## RULING

1. This Ruling is in respect to the Plaintiffs/Applicants application dated 24<sup>th</sup> July 2025 which seeks to further amend the Plaint dated 7<sup>th</sup> February 2023. The application was supported by the Affidavit sworn by Basil Criticos on the 24<sup>th</sup> July 2025.
2. Pursuant to the directions issued by the court, the said application was canvassed by way of written submissions. The Plaintiffs' filed written submissions dated 18<sup>th</sup> August 2025, no written submissions nor any response had been filed by any of the Defendants/Respondents as at the time this court retired to write its Ruling. In essence the application stands unopposed.
3. Even though the application is not opposed, In the Supreme Court of Kenya case of Gideon Sitelu Konchellah v Julius Lekakeny Ole Sunkuli & 2 Others [2018] eKLR, the court stated that;

“As a court of Law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the court will as a



matter of cause grant the sought orders. It behooves the court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted”.

4. Thus this court has a duty to look into the merits of the current application, even if the same is unopposed.
5. This Court has considered the application and written submissions file by the Plaintiffs together with the authorities cited in support of the application, the only issue to consider is whether the application for further amendment of the plaint is merited to warrant the grant of the orders sought.
6. Order 8 Rule 3(1) of the Civil Procedure Rules stipulates that;  
“...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.”  
And Rule 5(10) in particular provides that:-  
“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.”
7. The rationale for amendment of pleadings need not be belaboured; it is so that the Court can then effectively and effectually determine the issues in controversy between the parties to the suit and therefore should be freely allowed.
8. Accordingly, if the Court is satisfied that good cause has been shown for it, it ought to allow an amendment, notwithstanding previous amendments. In this case, the Plaintiffs averred in the Supporting Affidavit that the 11<sup>th</sup>, 65<sup>th</sup> to 67<sup>th</sup> Defendants whom principally the amendment is sought are directed against have yet to testify and hence no prejudice will be suffered on either party. That, to my mind, is a justifiable cause. The Defendants will still have a chance to amend their defence if so desired.
9. The Court of Appeal in considering a similar issue for amendment of pleadings stated in the case of Philip Chemwolo vs Augustine Kubende [1985]eKLR 492 that the duty of the Court is to do justice to the parties and not to punish them for their mistakes or omissions.
10. This court is of the view that the proposed amendments will ensure that the dispute between the parties is resolved expeditiously and with finality. This is so having regard to the fact that the pleadings can as a rule be allowed at any stage of the litigation so long as no prejudice will be suffered.
11. Consequently, considering that the suit has a further hearing date scheduled for 23<sup>rd</sup> October 2025, the Plaintiffs application dated 24<sup>th</sup> July 2025 is hereby allowed in the following terms: -
  - a. The Plaintiffs are hereby granted leave to file and serve the “Further Further Amended Plaint” within 5 days from today.
  - b. Upon service, the Defendants shall have 10 days to file and serve their amended defence.
  - c. Each party to bear own costs of the application.

Orders accordingly.

**DATED, SIGNED AND DELIVERED BY EMAIL THIS 29<sup>TH</sup> AUGUST 2025.**

**E.K. WABWOTO**



**JUDGE**

