



Kiarie & 2 others (Suing as the Chairman, Secretary and Members of Varsity Ville Residents Association) v Ruiru Academy Limited & 5 others (Environment and Land Case 510 of 2015) [2025] KEELC 5960 (KLR) (27 August 2025) (Ruling)

Neutral citation: [2025] KEELC 5960 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 510 OF 2015
CG MBOGO, J
AUGUST 27, 2025**

BETWEEN

**FRANCIS NDUNG’U KIARIE 1ST PLAINTIFF
JOHN MWANGI MATHENGE 2ND PLAINTIFF
MAJOR (RETIRED) JOHN NJOROGE WANJAGI 3RD PLAINTIFF
SUING AS THE CHAIRMAN, SECRETARY AND MEMBERS OF VARSITY
VILLE RESIDENTS ASSOCIATION**

AND

**RUIRU ACADEMY LIMITED 1ST DEFENDANT
WANDEMI DEVELOPERS LIMITED 2ND DEFENDANT
THE CHIEF LAND REGISTRAR 3RD DEFENDANT
THE HON ATTORNEY GENERAL 4TH DEFENDANT
DAVID NJOGU 5TH DEFENDANT
NATIONAL LAND COMMISSION 6TH DEFENDANT**

RULING

1. Before me is the notice of motion dated 5th March 2025 filed by the 2nd defendant/applicant and it is expressed to be brought under Order 2 Rule 15 of the Civil Procedure Rules and Section 3A of the [Civil Procedure Act](#) seeking the following orders:-
 - i. That the plaintiff’s amended plaint filed herein to be struck out.
 - ii. That the costs of this application be awarded to the 2nd defendant/respondent.



2. The application is premised on the grounds inter alia that the proposed 6th defendant in this suit is unnecessary, and the issue concerning this party has already been determined in Thika ELC Petition 733 of 2017 which was transferred to Nairobi and renamed ELC 29 of 2020.
3. The application is supported by the affidavit of Dominic Mbigi Njuguna, the learned counsel who has the conduct of this matter. The supporting affidavit is sworn on even date. The learned counsel deposed that the plaintiffs/respondents filed an application seeking to amend the plaint, and while the application indicates that a draft amendment plaint was annexed, none was served with the application. The learned counsel deposed that the issues raised in the application for amendment were directly and substantially in issue in ELC Petition No. 29 of 2020 which was heard and determined and judgment delivered on 28th July, 2022.
4. The learned counsel further deposed that the previous suit involved the plaintiffs/respondents and the proposed 6th defendant. That in that suit, the plaintiffs/respondents filed a cross-petition where they brought up the same issues in the now amended plaint, which issues were already determined. He deposed that being dissatisfied with the judgment, the plaintiffs/respondents filed an appeal and thus the issues raised in the amended plaint are res judicata.
5. The application was opposed vide the replying affidavit James Kimani Wanjohi, the secretary of the plaintiffs/respondents sworn on 5th June, 2025. The plaintiffs/respondents deposed that a copy of the amended plaint was annexed to the supporting affidavit in the application dated 23rd July, 2024. Further, it was deposed that in the said application, the inclusion of the National Land Commission was allowed by consent, and that the decision of the 6th defendant vide gazette notice dated 17th July, 2017 is yet to be implemented as the land registries in Thika/Ruiru continued to transfer some parcels of land which were revoked in the gazette notice.
6. The plaintiffs/respondents further deposed that after the revocation pursuant to the judgment delivered on 28th July, 2022, there have been illegal and irregular transfers and dealings on the property known as Ruiru/Ruiru East Block 7/44 (Ruiru Township 44), and it is for this reason that the 6th defendant is a party to the suit.
7. The application was canvassed by way of written submissions. The 2nd defendant/applicant filed its written submissions dated 25th April, 2025 where it raised the following issues for determination:-
 - i. Whether the amended plaint offends the doctrine of res judicata under Section 7 of the [Civil Procedure Act](#).
 - ii. Whether the inclusion of the National Land Commission (NLC) as the 6th defendant is proper or an abuse of the court process.
 - iii. Whether the filing of the amended plaint is an abuse of the court process and offends the principle of finality in litigation.
 - iv. Whether the amended plaint should be struck out for want of procedural compliance and improper leave.
8. On the first issue, the 2nd defendant/applicant submitted that the application for amendment offends the doctrine of res judicata. To buttress on this issue, the 2nd defendant/applicant relied on the cases of Uhuru Highway Development Ltd v Central Bank of Kenya & 2 Others [1996] eKLR and ET v Attorney General & Another [2012] eKLR.



9. On the second issue, the 2nd defendant/applicant submitted that the joinder of the National Land Commission as the 6th defendants amounts to an abuse of the court process since it includes forum shopping or re-litigation of settled matters. While relying on the cases of Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR, the 2nd defendant/applicant urged the court to strike out the application for being vexatious, duplicative and clearly instituted in bad faith.
10. On the third and fourth issues, the 2nd defendant/applicant submitted that the application for amendment of the plaint offends the wider public principle of finality in litigation. Further, that while the draft amended plaint was not annexed or served upon it, they were not afforded a fair opportunity to object to the material changes sought in the application. The 2nd defendant/applicant relied on the cases of Joseph Ochieng & 2 others Trading as Aquiline Agencies v First National Bank of Chicago [1995] eKLR and Benjoh Amalgamated Ltd & Another v Kenya Commercial Bank Ltd [2014] eKLR.
11. The plaintiffs/respondents filed their written submissions dated 5th June, 2025 where they raised one issue for determination which is whether the amended plaint is res judicata. While relying on the case of Mungai v Ngunya & 3 others (Land Case E154 of 2023) [2024] KEELC 5820 (KLR) (31 July 2024) (Ruling) the plaintiffs/respondents submitted that the 2nd defendant/applicant has no evidence to show that all the elements of res judicata are met. Further reliance was placed in the case of Chemweno v Kiprop (Suing as the Legal Representative of the estate of Luka Kiprop Kiptai) (Environment and Land Appeal E006 of 2023) [2024] KEELC 4705 (KLR) (14 June 2024) (Judgment). The plaintiffs/respondents submitted that the prayers sought in the two suits will lead to the finding that the issues in the two suits are different with no rational nexus.
12. I have considered the application, the replying affidavit and the written submissions filed by the respective parties. In my view, the issue for determination is whether this court ought to strike out the amended plaint.
13. In arguing its application, the 2nd defendant/applicant contended that the 6th defendant is unnecessary in this suit and this issue has already been determined in Thika ELC Petition 733 of 2017 which was transferred to Nairobi and renamed ELC 29 of 2020. In addition, it was argued that the application for amendment of the plaint was not annexed to the notice of motion date 23rd July, 2024. The plaintiffs/respondents in response argued that the draft amended plaint was annexed to the application, the said application was allowed by consent, and further that there have been irregular dealings and transfers pursuant to the judgment delivered on 28th July, 2022.
14. The decision to strike out pleadings is discretionary, and the court in exercising such discretion only ought to consider the same as a last resort. The plaintiffs/respondents filed a notice of motion dated 23rd July, 2024 seeking to file an amended plaint. The same was attached to their application as evidenced on pages 59 to 68 of the supporting affidavit. On 24th September, 2024, and by consent of the parties, the plaintiffs/respondents were granted leave to file and serve the amended plaint. The defendants were also granted leave to file their amended defence.
15. Prior to grant of these orders and in the course of proceedings on the material date, Ms. Stower, holding brief for Ms. Nyambura for the 2nd defendant/applicant informed the court as follows:-

“In the premises, the application dated the 02/05/2024 can be allowed. Furthermore, I also wish to state that I have no objection to the application dated the 23/07/2024. Consequently, the Plaintiff herein can be granted leave to file and serve an amended plaint. Further, I can also be granted corresponding leave to file and serve an amended statement of defence.”



16. From the above, it is clear that the 2nd defendant/applicant was clear on the amended complaint, owing to the fact that it was ready to file an amended defence. The amended complaint was also allowed owing to the consent of the parties. The 2nd defendant/applicant has not indicated that the consent was obtained through fraud or coercion. Equally, it has not sought for the setting aside of the consent.
17. In the case of D.T. Dobie & Co. (Ltd) –vs- Muchina [1982] KLR 1, it was held: -
- “No suit ought to be summarily dismissed unless it appears to be hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”
18. As I place reliance on the above cited authority, there is absolutely no reason why this court should strike out the amended complaint. The same was obtained by consent of the parties. A draft copy of the same was also attached to the application. The orders allowing the same are still validly in place.
19. From the above, the notice of motion dated 5th March 2025 is devoid of merits, and it is hereby dismissed. The plaintiffs/respondents are awarded the costs of this application.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 27TH DAY OF AUGUST, 2025.

HON. MBOGO C.G.

JUDGE

27/08/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Otieno for the Plaintiff

Mr. Mbigi for the 2nd Defendant

Ms. Manyika for the 6th Defendant

