



REPUBLIC OF KENYA



Ndiritu v Kanugu (Sued as the administrator of the Estate of Gerald Kanugu (Deceased) & another (Environment & Land Case E029 of 2021) [2024] KEELC 462 (KLR) (31 January 2024) (Ruling)

Neutral citation: [2024] KEELC 462 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E029 OF 2021**

CK NZILI, J

JANUARY 31, 2024

BETWEEN

ROSE MUMBI NDIRITU PLAINTIFF

AND

**DAVID KINYUA KANUGU (SUED AS THE ADMINISTRATOR OF THE
ESTATE OF GERALD KANUGU (DECEASED) 1ST DEFENDANT**

GITOBU M'RUNTARI MUCHERU 2ND DEFENDANT

RULING

1. The court is asked to grant leave to amend the originating summons dated 24.11.2021 to reflect the suit parcels of land under occupation by the plaintiff as L.R No. Kibirichia/Ntumburi/3619 and 3620 instead of L.R No. Kibirichia/Ntumburi/3619, 3620 and 3821. The reasons are contained in the face of the application and the supporting affidavit of Rose Mumbi Ndiritu, sworn on 6.11.2023. In the affidavits, the applicant has attached copies of the scene visit report by the Deputy Registrar of this court dated 4.4.2023, and a land surveyors report as annexure marked RMN 0 – 2 respectively, and the draft proposed amended originating summons.
2. Section 100 of the *Civil Procedure Act* governs the power to amend pleadings. It provides that the Court may at any time and on such terms as to costs or otherwise as it thinks fit amend any defect or error in the proceedings in a suit, and that all the necessary amendments shall be made to determine the fundamental questions or issues raised by or defended on the proceedings.
3. Order 8 rule 5 (1) of the *Civil Procedure Rules* provides that for purposes of determining the fundamental questions in controversy between the parties or correcting any error or defect, the court on its motion or on an application by a party may order any document to be amended in such a manner as it may direct. In interpreting this power, the court in *Easter Bakery vs Castellino* (1958) E.A 461, Sir



- O Connor P held that amendments sought before the hearing should be freely allowed if they can be made without injustice to the other side and even if so, if such could be compensated by way of costs.
4. In *Joseph Ochieng & others vs First National Bank of Chicago* C. A No. 149 of 1991, the court said, guided by Bullen & Leake & Jacobs Precedents of Pleadings 12th Edition, that the court's power to allow for amendment is to determine the actual substantive merits of the case that amendments should be timeously applied for that even if made late as long as it is made in good faith and where the proposed amendments are not immaterial, useless or technical should be allowed unless they would substantially alter the case or deprive a defendant an accrued right to rely on the Limitations of Actions Act.
 5. Applying the foregoing principles to the instant case, the applicant avers following a court-sanctioned site visit and a land surveyor's report clarity regarding the specific parcels of land and size she has occupied is required.
 6. Amendments per the law cited and expounded by courts aiming at clarifying issues in controversy so that the court can determine the genuine dispute based on facts. Denial of amendments must be based on clear and valid reasons such as prejudice to the other side and shifting of goal posts when the defendant is almost scoring. See *Kassam vs Bank of Baroda* (2002) eKLR on the introduction of a new cause of action. See also *St. Patrick's Hill Secondary School Ltd vs Bank of Africa (K) Ltd* (2018) eKLR. The respondents have not shown what prejudice they stand to suffer should the proposed amendments be made. The defendants shall have a chance to reply to the proposed amendments.
 7. I find the application with merits. The proposed amended originating summons shall be filed and served within 21 days from the date hereof. there will be no orders as to costs. Mention on 26.2.2024 for case conference.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 31ST DAY OF JANUARY 2024

In presence of

C.A Kananu/Mukami

Muthomi for the Applicant

HON. CK NZILI

JUDGE

