



REPUBLIC OF KENYA



KENYA LAW
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**Nkirote v Land Registrar Meru County & 17 others (Environment & Land
Case E017 of 2021) [2024] KEELC 985 (KLR) (21 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 985 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E017 OF 2021
CK NZILI, J
FEBRUARY 21, 2024**

BETWEEN

CELINA NKIROTE PLAINTIFF

AND

LAND REGISTRAR MERU COUNTY 1ST DEFENDANT
ATTORNEY GENERAL 2ND DEFENDANT
OFFICER 3RD DEFENDANT
MERU COUNTY SURVEYOR 4TH DEFENDANT
GIDEON MUGAMBI MWORIA 5TH DEFENDANT
MYLES MURITHI MURIUKI 6TH DEFENDANT
M'MBOROKI NDURA 7TH DEFENDANT
JULIUS KIMATHI MUNGANIA 8TH DEFENDANT
YETU PAMOJA COOPERATIVE SACCO 9TH DEFENDANT
JAMES WAGEMA RUTERE 10TH DEFENDANT
JULIUS KIMATHI MUNGANIA 11TH DEFENDANT
AFUSA GRACE SULEIMAN 12TH DEFENDANT
YUNUS ADAM MUTHAMIA 13TH DEFENDANT
JOSEPH HUNYU THIRIKWA 14TH DEFENDANT
PRISCILLA MWARI 15TH DEFENDANT
M'MUNGANIA M'ARITHO 16TH DEFENDANT
MERCY KANYIRI 17TH DEFENDANT



RULING

1. The court is asked to grant the plaintiff leave to amend the plaint as per the annexed draft plaint. The reasons are contained on the face of the application and a supporting affidavit sworn by Celina Nkirote on 20.11.2023.
2. Briefly, the plaintiff says the proposed amendments are necessary to bring all questions and information to the fore for a just and fair determination of the suit. Further, the applicant says no prejudice will be occasioned to the respondents, who will have a chance to amend their defense. Additionally, the applicant avers the amendments were necessitated by the various changes of the suit land at the registry and some of the defendants who have encroached onto her land.
3. After the service of the application upon the defendants/respondents, it was only the 5th and 6th defendants/respondents who opposed the application by a replying affidavit sworn on 15.12.2023 by Mercy Kanyiri. It is averred that the application is misconceived, a waste of the court's time, and an abuse of the court process.
4. The 5th and 6th defendant's/respondents aver there has been an inordinate delay; the applicant came to court with dirty hands, the initially amended plaint was struck out on 20.9.2022 and the delay has not been explained. It was a delaying tactic; litigation must come to an end and the application amounts to a travesty of justice; otherwise, justice delayed was justice denied.
5. Order 8 rule 5 of the *Civil Procedure Rules* grants the court powers to allow for amendment of pleadings at any stage of the proceedings on such terms as to costs or otherwise as may be just and in such a manner as it may direct. In *Central Bank Kenya Ltd vs Trust Bank Ltd* (2002) E. A 365, the court set out some of the considerations on whether to grant leave as prejudice to other parties, if the amendment will unduly delay the case and the amendments are necessary. The court said the delay was not a ground for declining leave unless the delay would prejudice other parties.
6. In *Uchumi Supermarkets Ltd & another vs Sidbi Investments Ltd* (2018) eKLR, the court cited *Kenya Hotels Ltd vs Oriental Commercial Bank Ltd* (2018) eKLR that whether or not to allow an amendment depends on the nature and extent of the amendment.
7. The reasons given by the applicant for the amendment are that changes in the status of the suit land and its occupation by third parties have occurred during the pendency of this suit. The respondents have not termed the proposed amendments as bringing on board inconsistent cause of action and or as denying them their vested interests or accrued legal rights or occasioning an injustice to them. See *George Gikubu Mbutia vs Consolidated Bank of (K) Ltd & another* (2016) eKLR.
8. The hearing of the suit is yet to commence. It is also not in dispute that some of the respondents have passed on. The delay as alleged does not discount the fact that the application is made in good faith, given the changes to the title were beyond the control of the applicant. The proposed amendments are not immaterial, useless, or merely technical. They go to the issue in controversy before this court. See *Joseph Ochieng & 2 others vs First National Bank of Chicago* (1995) eKLR.
9. The upshot is that I allow the application. The amended plaint shall be filed within 15 days from today. Orders accordingly.



**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON
THIS 21ST DAY OF FEBRUARY 2024**

In presence of

C.A Kananu

Plaintiff

10th, 13th and 16th defendants

Ashaba for plaintiff

Miss Kerubo for 16th & 17th respondent

Miss Kendi for 1st & 3rd respondents

HON. CK NZILI

JUDGE

