



REPUBLIC OF KENYA



Kaunga alias John Kirimi v District Land Adjudication Officer Igembe & 4 others (Judicial Review Application E003 of 2023) [2024] KEELC 3693 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEELC 3693 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
JUDICIAL REVIEW APPLICATION E003 OF 2023
CK YANO, J
FEBRUARY 15, 2024

IN THE MATTER OF JUDICIAL REVIEW APPLICATION BY DOMICIANO KAUNGA
AND
IN THE MATTER OF ARTICLES 2(1),22,23,47, 48,159(2)
AND 162(2) OF THE CONSTITUTION OF KENYA 2010
AND
IN THE MATTER OF THE FAIR ADMINISTRIVE ACTION ACT, 2015
AND
IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT, CAP 26
AND
IN THE MATTER OF THE ORDER 50 RULE 6, ORDER 51 RULE 1(1),
(2) & (4) & ORDER 53 OF THE CIVIL PROCEDURE RULES, 2010
AND
IN THE MATTER OF LAND ADJUDICATION ACT,
CAP 284 LAWS OF KENYA
AND
IN THE MATTER OF FINDINGS OF PROCEEDINGS AND ORDER MADE BY
THE MINISTER IN APPEAL. NO. 360 OF 2017 DELIVERED ON 14/10/2022 OVER
LAND PARCEL NO. 4500/LOWER ATHIRU GAITI A ADJUDICATION SECTION
AND
IN THE MATTER OF JUSTUS KABAYA

BETWEEN
DOMICIANO KAUNGA ALIAS JOHN KIRIMI EXPARTE APPLICANT



AND

DISTRICT LAND ADJUDICATION OFFICER IGEMBE 1ST RESPONDENT
DEPUTY COUNTY COMMISSIONER IGEMBE CENTRAL . 2ND RESPONDENT
DIRECTOR LAND ADJUDICATION 3RD RESPONDENT
LAND REGISTRAR IGEMBE SOUTH 4TH RESPONDENT
HON ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. The application for consideration is the notice of Motion dated 30th October, 2023 brought by the *ex-parte* applicant under Order 8 Rule 3 of the [Civil Procedure Rules](#) and Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and other enabling provisions of the law.
2. The applicant is seeking leave to amend the Notice of Motion dated 22nd August, 2023. The application is supported by the affidavit of Domiciano Kaunga, the applicant and premised in the grounds that the said amendment is necessary for purposes of determining the real question or issues which have been raised by the parties. That the amendment will be necessary to avoid multiplicity of suits and that it is only just and fair that the application be allowed.
3. The applicant avers that the amendments are not changing the substance of the suit or cause of action, but will fully determine the applicant's suit. That the amendments are only meant to ensure Justice is done in the matter by bringing all the issues in controversy before the court, adding that no party will be prejudiced by the proposed amendments as the respondents have a chance to respond to the amendments. The draft amended Notice of Motion has been annexed.
4. The *ex-parte* applicant filed submissions dated 5th December, 2023 through the firm of M/s Bebo & Mose Advocates. It is their submission that the court has inherent jurisdiction to allow amendments and cited order 8 Rule 5(1) & 2 of the [Civil Procedure Rules](#), and relied on the case of [Republic v Land Disputes Tribunal Meru Central District](#) [2009]eKLR, [Commissioner of Andis v Hotel Kunste Limited](#) Court of Appeal 234 of 2995, [Eastern Bakery v Castelino](#) [1958] EA461, [Peter M. Echarai v Priscilla N. Echarai](#) [1998]eKLR. The court was urged to allow the application.
5. There is no opposition to the application. The submissions filed by the respondents and the interested party are in respect of the Notice of Motion dated 22nd August, 2023 and are therefore not relevant in the determination of the instant application.
6. I have considered the application. The applicant is seeking leave to amend his Notice of Motion dated 22nd August, 2023. The general power to amend pleadings is donated by Section 100 of the [Civil Procedure Act](#) and is provided under Order 8 rule 5 of the [Civil Procedure Rules](#) which provides as follows:-

“ 5

- (1) for the purposes of determining the real question in controversy between the parties, or correcting any defect or error in any proceedings, the court may either of its own motion or even 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.

(2) This rule shall not have effect in relation to a judgment or order.”

7. Further order 8 rule 3(5) provides that:

“An amendment may be allowed notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as the cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment”

8. It is clear from the above provisions of the law that the court has discretionary power to allow amendment of pleadings at any stage before judgment for determining the real question or issue between the parties, even if the amendment will occasion adding a new cause of action. That discretionary power must, however be exercised judiciously and not whimsically. In the application, the applicant seeks to amend the application dated in order to correct his name to read Domiciano Kaunga alias John Kirimi instead of Domiciano Kaunga and amend the 2nd respondent to read Deputy County Commissioner Igembe Central instead of Director Lands Adjudication. Judgment is yet to be delivered in the matter. In my view, the amendment will not prejudice any of the parties in the case as they too will be allowed to respond to the amended motion.

9. Consequently, I exercise my discretion and allow the application and order as follows:-

- (a) The application is allowed in terms of prayers 1 and 2
- (b) The applicant to file and serve the amended notice of motion within 7 days from the date of this ruling.
- (c) The respondents and interested party to file and serve their responses to the amended motion and other documents within 14 days of service by the applicant.
- (d) Costs of the application to abide the outcome of the substantive motion.

10. Orders accordingly.

DATED SIGNED AND DELIVERED AT MERU THIS 15TH DAY OF FEBRUARY, 2024

HON. C. YANO

ELC – JUDGE

In the Presence of: -

Court Assistant: Kiragu

Ms. Asuma holding brief for Mose for Ex-parte applicant

Ms. Nakandi for Interested party

No appearance for respondents

