



Mayfair Establishments Ltd v Taib (Sued as the Legal Representative of the Estate of Sheikh Ali Taib Bajaber - Deceased) & 3 others (Environment & Land Case 99 of 2022) [2024] KEELC 5601 (KLR) (30 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5601 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 99 OF 2022**

**LL NAIKUNI, J
JULY 30, 2024**

BETWEEN

MAYFAIR ESTABLISHMENTS LTD PLAINTIFF

AND

ABDULLA ALI TAIB (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SHEIKH ALI TAIB BAJABER - DECEASED) 1ST DEFENDANT

KENNEDY ELLAM WEKESA (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF GEORGE ELLAM WEKESA - DECEASED) ... 2ND DEFENDANT

SELINA WEKESA 3RD DEFENDANT

CATHERINE NEMALI WEKESA 4TH DEFENDANT

RULING

I. Introduction

1. This Honorable Court is tasked to make a determination of the Notice of Motion application dated 6th May, 2024 by Catherine Nemali Wekesa, the 4th Defendant herein. It was brought under the provision of Section 3A of the [Civil Procedure Act](#) Cap 21 Law of Kenya, Order 8 Rule 3 of the Civil Procedure Rules.
2. Despite of service of the Notice of Motion application, by the time of penning down this Ruling, the Honourable Court was not in a position to access neither any Replies nor written submissions by the Plaintiff/Respondent. In the given circumstances, the Honourable Court has proceeded to deliver the Ruling on its own merit whatsoever.



II. The 1st Defendant/Applicant's case.

3. The 1st Defendant/Applicant sought for the following orders:-
 - a. That this Honourable Court be pleased to grant the 4th Defendant leave to Amend the Statement of Defence dated 26th September 2022.
 - b. That the costs of this application be in the cause.
4. The Application was based on grounds, testimonial facts and averments of the eight (8) Paragraphed Supporting Affidavit of Catherine Wekesa, the 4th Defendant herein, sworn and dated 6th May, 2024 and the one (1) marked as "CW – 1 " annexed herein. She averred as follows:-
 - a. She was the 4th Defendant and thus competent to swear this affidavit.
 - b. She had filed a Statement of Defence in response to the Plaintiff herein and the records would bear her witness,
 - c. She contended that from the Defence she had clearly indicated that she had since acquired prescriptive rights over the suit property having resided thereon,
 - d. The suit was filed long after the 4th Defendant's title had been extinguished by the operatives of Section 17 of the Limitation of Act.
 - e. In the given circumstances she had acquired prescriptive rights as hereinabove indicated and it was only fair that leave be granted to enable her file a Counter Claim for Adverse possession in the manner sought in the proposed Amended Defence and a copy whereof was hereto annexed and marked as "CW – 1".
 - a. It was only just expeditious and fair that all issues surrounding the subject title be addressed and determined in this suit.
 - b. Granting the orders sought herein would not prejudice the Plaintiff.
 - c. To the contrary it would enable the court deal with all issues in respect of the suit property with finality and thereby ensure that justice was not just served but served expeditiously.

II. Submissions

5. On 21st June, 2024 while all the parties were in Court directions were granted to have the Notice of Motion application dated 6th May, 2024 be disposed of by way of written submissions. Pursuant to that, and as already indicated, by the time of penning down this Ruling, the Honourable Court was only able to access the Submission by the 4th Defendant herein and hence it reserved 30th July, 2024 as the date to deliver its Ruling thereof.

A. The Written Submission by the 4th Defendant/Applicant

6. The Learned Counsel for the 4th Defendant/Applicant through the Law firm of Messrs. Wameyo Onyango & Associates Advocates filed their written submissions dated 24th July, 2024. Mr. Wameyo Advocate commenced his submissions by stating that by an application dated 6th May, 2024 the 4th Defendant is seeking the amendment of the Defence to introduce a Counter - Claim. He stated that the 4th Defendant filed a Statement of Defence dated 26th September, 2022. In filing the said pleadings



the 4th Defendant was alive to the decision of the Court of Appeal in the case of: “Njuguna Ndatho – Versus - Masa Itumu & 2 others, Civil Appeal No:231 of 1999 where the court addressed itself thus:-

“The question that next arises is whether the respondent is entitled to invoke the doctrine of adverse possession to claim title to the suit land by way of a Counter - Claim in the suit. The Learned Judge, despite the provision of Order XXXVI Rule 3b of the Civil Procedure Rules thought that they could so Counter - Claim. He did not see any injustice caused to the Appellant in the circumstances. This court has on several occasions held that title by adverse possession is to be sought by way of an Originating Summons Act Order XXXVI Rule 3D of the Civil Procedure Rules. The claim for title by virtue of adverse possession by way of a cross-claim in a suit was in this case misconceived. “

7. The Learned Counsel asserted that having regard to the foregoing authority, the 4th Defendant took the position that she could not raise a Counter - Claim for Land adverse possession in the proceedings herein. It appears that the latest court's decisions have veered from the position stated in “the Njuguna Ndatho case (Supra)”. The 4th Defendant had learnt that the courts had since adopted a less restrictive approach that allowed for lodging a claim for adverse possession through a Counter - Claim in suits commenced by way of Plaint. To buttress on this legal point, he referred Court to the case of “Chevnon (K) Limited (formerly known as Caltex Oil Kenya Limited – Versus - Harrison Charo was Shutu”, while addressing itself to “the Njuguna Ndatho case, the Court of Appeal rendered itself thus:-

“The courts have since this decision, held that a claim by adverse possession can be brought by a Plaint. See Mariba – Versus - Mariba, Civil Appeal No. 188 of 2002, Counter - Claim or Defence as was the case here. See Wabala – Versus - Okumu 1997)LLR 609(KAK). In Gulam Mariam Noordin – Versus - Julius Charo Karisa, Civil Appeal No. 26 of 2018, where the claim was raised in the Defence, this court in rejecting the objection to the procedure stated the law as follows:-

“Where a party like the respondent in this appeal is sued for vacant possession, he can raise a Defence of statute of limitation by filing a Defence or a Defence and Counter - Claim. It is only when the party applies to be registered as the proprietor of land by adverse possession that Order 37 Rule 7 requires such a claim to be brought by originating summons. It has also been held that the procedure of originating summons is not suitable for resolving complex and contentious questions of fact and law. Be that as it may, and to answer the question whether it was erroneous to sanction a claim of adverse possession, only pleaded in the Defence, we refer to the case of Wabala – Versus - Okumu (1997) LLR 609 (KAK) which, like this appeal, the claim for adverse possession was in the form of a Defence in an action for eviction. Court of Appeal in upholding the claim did not fault the procedure. Similarly, Bayete Co. Limited – Versus - Kosgey (1998) LLR 813 where the plaintiff made no specific plea of adverse possession, the plea was nonetheless granted”.

8. The Counsel informed Court that upon learning of the shift in the position regarding the lodging of a claim for adverse possession through Counter - Claim, the 4th Defendant had moved the court for leave to amend the Statement of Defence in order to bring a counterclaim in the manner set out in the draft annexed to the supporting affidavit. The foregoing amendment would not-prejudice the Plaintiff in any manner since the facts that inform such an amendment have been expressly pleaded in the Statement of Defence. The intended amendment would assist the court in making a final determination of the issues of adverse possession and the registration of the title in favour of the 4th Defendant should the Counter - Claim be upheld. This would be in line with the overriding objective of the court which is to see the expeditious determination of disputes with finality without unnecessary regard to technicalities.



In this case as already pleaded, the Counter - Claim will not raise new issues: The issues that would inform the issuance of the reliefs sought vide the Counter - Claim was already germane to and central in the determination of the suit before the court.

9. The Learned Counsel stated that the Plaintiff from their Replying Affidavit raised several issues and which could be summarized on four – hold aspects as follows:-

Firstly, that the 4th Defendant had no right of the title capable of being extinguished by operation of section 17 of the Limitation of Actions Act. The 4th Defendant enjoyed a possessory interest. She was in actual possession of the suit premises and has been in such possession for a period well in excess of the 12 year's statutory period. He agreed with the Plaintiff in this respect that the 4th Defendant had a possessory interest which could not be extinguished by the operation of Section 17 of the Limitation of Actions Act. On the other hand, the Plaintiff's title was amenable to being extinguished by the dint of section 17 of the Limitation of Actions Act. Consequently, the amendment is not sought with a view to extinguishing the 4th Defendant's interest on the suit property but rather the alleged interest of the Plaintiff by the operation of Section 17 of the Limitation of Actions Act.

Secondly, that there was no justification for issuance of an order for amendment of the Defence in the manner sought in the application dated 6th May, 2024. He stated that they had laid out the background of the case. The defence so far filed by the 4th Defendant showed that the defendant has invoked the provisions of section 7 of the Limitation of Actions Act as shield. In the circumstances, the court upon finding in favour of the 4th Defendant will not be empowered to direct that the property be registered in favour of the 4th Defendant. In order to ensure that all disputes were resolved with finality, it was only fair that the amendments be allowed to bring to the fore all the issues for determination. Such an action was in terms of with the overriding objectives of this court.

Thirdly, that the Proposed amended Statement of Defence was void and a nullity in fact and law. According to him, this was a general pronouncement that lacked specificity both in fact and law. He urged the Honourable Court to ignore the same.

Fourthly, that the 4th Defendant had been a party to previous proceedings. The Counsel refuted this claim is not true. The 4th Defendant had never been a party to any of the suits cited by the Plaintiff. Further, the foregoing pronouncement would be better placed before the court as a Defence to the Counter - Claim. Even at this stage, it was clear that the parties had joined issues on this fact. The mere fact that the parties had joined issues on opportunity to amend the Defence as herein proposed. On the contrary the same should inform the need for the amendment as sought to enable the court determine the issues with finality.

10. In conclusion, the Learned Counsel contended that having regard to the foregoing it is abundantly clear at least to the 4th Defendant, that the Plaintiff stands to suffer no prejudice if the orders sought herein were granted. He prayed that the court allowed the application dated 6th May, 2024 as prayed.

V. Analysis and Determination

11. As indicated above, I have keenly considered the pleadings filed by all the parties, the written submissions by the Learned Counsel for the 4th Defendant, the cited authorities the relevant provisions of the Constitution of Kenya, 2010 and the law. I have also perused all the orders that have been mentioned in this application.
12. This Honourable Court has framed two (2) broad salient issues for its determination. These are:-



- a. Whether the Court should allow the Notice of Motion application dated 6th May, 2024 for amendment of the defence.
- b. Who bears the costs of the Notice of Motion application dated 6th May, 2024?

Issue No. a). Whether the Court should allow the Notice of Motion application dated 6th May, 2024 for Amendment of the Defence

13. The main substratum of this application is on the amendment of the Defence. Under this sub - title the Court shall evaluate the merits of the Notice of Motion application. The general power to amend pleadings draws from the provision of Order 8 Rules 1, 2, 3, 4, 5 and 6 of the Civil Procedure Rules, 2010 and Section 100 of the *Civil Procedure Act*, Cap. 21. It is trite law that where pleadings have closed the leave of Court is required in line with criteria set out under Order 8 Rule 3 (1), (2), (3), (4) and (5) of the Civil Procedure Rules, 2010.
14. Parties to a suit also have a right to amend their pleadings at any stage of the proceedings, albeit that right is not absolute, for it is dependent upon the discretion of the court. However, this discretion should be exercised judiciously.
15. Order 8 rule 5 of the Civil Procedure Rules provides as follows: -

“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 documents to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”
16. The court has the power to amend pleadings which power can be exercised at any stage of the proceedings before judgment as per Bullen and Leake & Jacob's Precedents of Pleading, 12th Edition, which provides as follows concerning amendment of pleadings:

“.....power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action...”
17. Similarly, in Halsbury's Laws of England, 4th Ed. (re-issue), Vol. 36(1) at paragraph 76, state the following about amendments of pleadings: -

“.....The purpose of the amendment is to facilitate the determination of the real question in controversy between the parties to any proceedings, and for this purpose the court may at any stage order the amendment of any document, either on application by any party to the proceedings or of its own motion. The person applying for amendment must be acting in good faith. Amendment will not be allowed at a late stage of the trial if on analysis of it is intended for the first time thereby to advance a new ground of defence. If the amendment for which leave is asked seeks to repair an omission due to negligence or carelessness, leave to amend may be granted if the amendment can be made without injustice to the other side...”



18. The discretion of courts to amend pleadings was summarized by the Court of Appeal in “Joseph Ochieng & 2 others – Versus - First National Bank of Chicago, Civil Appeal No. 149 of 1991” thus:

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the Plaintiff will not be allowed to reframe his case or his claim if by an amendment of the Plaintiff the Defendant would be deprived of his right to rely on Limitation Acts.”

19. The principles governing amendment of pleadings, among them the case of “St. Patrick’s Hill School Ltd – Versus - Bank of Africa Kenya Ltd (2018) eKLR”, where the Court of Appeal set out the principles as follows: -

- a) The power of the court to allow amendments is intended to determine the true substantive merits of the case;
- b) The amendments should be timeously applied for;
- c) Power to amend can be exercised by the court at any stage of the proceedings;
- d) That as a general rule however late the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side.
- e) The Plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaintiff the defendant would be deprived of his right to rely on limitations Act subject however to powers of the court to still allow an amendment notwithstanding the expiry of current period of limitation.

20. This Court makes reliance on the decision in the case of “K K Lodgit Limited – Versus - Gemina Insurance Company Ltd & Another (2021) eKLR” where it was held that:

“..... it is clear that courts will readily grant leave to amend pleadings in order to determine the real issue(s) in dispute. The only caveat is that a proposed amendment should not cause prejudice or an injustice to the opposing party. Such prejudice or injustice must be one that cannot be compensated by an award of costs. Further, the Court will not permit an amendment that completely changes the nature of a party’s case.

21. From the principles set out above and as captured in the authorities cited by the advocates for the parties, it is clear that amendments of pleadings should be freely allowed unless they are bound to cause prejudice to the other party. That amendments should be allowed even in situations of delay if the other side can be compensated by award of costs. The caveat in amendments is that it should not change the character of the case and should not deprive the other side of its legal rights. Any amendments allowed by the court should be geared towards achieving a just and final determination of the real issues in controversy between the parties. In addition, the application must be made in good faith.



22. In the instant case, it is instructive to note that the suit was instituted by the Plaintiff through a Plaint dated and filed in Court 7th September, 2022. Upon service of Summons to Enter Appearance dated 8th August, 2022, the 1st filed a Memorandum of Appearance dated 30th September, 2022, a Preliminary Objection dated 7th October, 2022 and a Statement of Defence dated 24th January, 2023. Whilst the 2nd 3rd never entered any appearance at all, the 4th Defendants filed their Statement of Defence dated 26th September, 2022. Upon full compliance of the provision of the Order 11 of the Civil Procedure Rules, 2010 and vide a Ruling of this Court delivered on 9th April, 2024 while dismissing the Preliminary Objection raised by the 1st Defendant it set down the matter for hearing on 24th April, 2024. However, it was on the 21st June, 2024 that the hearing for the Plaintiff's case ensued and subsequently closed their case on the said material date.
23. From the record, the 4th Defendant/Applicant moved Court vide her application dated 6th May, 2024. Specifically, she sought for the following orders which the court feels imperative to reproduce verbatim herein:
- a. That this Honourable Court be pleased to grant the 4th Defendant leave to Amend the Statement of Defence dated 26th September 2022.
 - b. That the costs of this application be in the cause.

While considering this application, and without appearing to be digressing, I am compelled to extrapolate on the importance and meaning of "Pleadings". The provision of Section 2 of the Civil procedure Act, cap. 21 defines it as:

"Pleadings include a Petition or Summons, and the Statements in writing of the Claim or demand of any Plaintiff, and of the Defence of any Defendant thereto, and of the reply of the Plaintiff to any defence or Counter – Claim of a Defendant"

The Learned Editor of "Mulla Code of Civil Procedure (Abridged) (13th Edition. P. M Bakshi, Bullerworths India New Delhi 2000)" has discussed the importance of pleading and the following material is adopted in substance from him. The issues for determination in a suit generally flow from the pleadings and unless the pleadings are amended in accordance with the Civil procedure Rules, the trial Court by dint of the foresaid rules may only pronounce Judgement on the issues arising from the pleadings or such issues as the parties have framed for the Court's determination.

In the case of "Dakianga Distributors (K) Limited – Versus – Kenya Seed Company Limited (2015) eKLR" the Court of Appeal stated as follows concerning Pleadings:-

".....a useful discussion on the importance of pleadings is to be found in "the Bullen and Leake and Jacob's Precedents of Pleadings, 12th Edition, London, Sweet & Maxwell (The Common law Library No. 5)" where the Learned authors declare:-

"The system of pleadings operates to define and delimit with clarity and precision the real matters in controversy between parties upon which they can prepare and present their respective cases and upon which the Court will be called upon to adjudicate between them. It thus serves the two – fold purposes of informing each party what is the case of the opposite party which he will have to meet before and at the trial, and at the same time informing the Court what are the issues between the parties which will govern the interlocutory proceedings before the trial and which the Court will have to determine at the trial"



While exploring on the importance of pleadings by parties, I seek refuge from the provision of Order 2 Rules 6 (1) of the Civil Procedure Rules, 2010 which provided as follows:-

“No party may in any pleading make an allegation of fact or raise any new ground of claim, inconsistent with the previous pleadings of his in the same suit”.

In other words parties are bound by their own pleadings. To buttress on this legal position I have sought refuge from a few decisions being the case of the Supreme Court of Nigeria in “Adetoun Oladeji (NIG) – Versus – Nigeria Breweries PLC SC 91/2002” where Adereji JSC expressed himself thus on the importance and place of pleadings:-

“.....it is now true principle in law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings, or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded.....in fact parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the arty to meet the new situation”.

The same position was upheld in our Supreme Court case of “Raila Amolo Odinga & Another – Versus IEBC & 2 Others (2017) eKLR. Where the Court held thus:-

“In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings, ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the Court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a Court to frame an issue no arising on the pleadings.....”

24. It is well noted that the 4th Defendant/Applicant seeks an amendment of her defence under the above stated prayers. Ordinarily, the applicant would have to indicate the nature of the amendment by stating that the draft amended defence attached herein to be deemed as the intended amendment. The Court has not seen the prayer. On the contrary, it was from the supporting affidavit sworn by her that she states the reason for seeking to Amend her pleadings is to introduced the Counter – Claim and has attached an annexure marked as “CW – 1” being the Draft Amended Defence and Counter – Claim. According to her, this was because it was contended by the 4th Defendant that she had acquired rights by way of adverse possession over the suit property having remained in quiet peaceful and uninterrupted possession of the same for a period in excess of 12 years. The suit herein was about ownership of the suit property in which the 4th Defendant currently resided. It was only just expeditious and fair that all issues surrounding the subject title be addressed and determined in this suit. In the circumstances it was just and expeditious that the 4th Defendant be granted leave to amend the statement of defence dated 26th September 2022 in order to introduce a Counter - Claim against the Plaintiff and the 1st Defendant on the ground of adverse possession. The parties herein were quite aware of the 4th Defendant’s claim for possessory interest since the same have been adequately covered in the statement of defence and the averments of the statement of defence to introduce the Counter - Claim will not prejudice the parties herein. The Honourable Court completely disagrees with that assertion for the following reasons. Firstly, in my own view, the annexure and information adduced thereof is in form of empirical evidence averred within the sworn affidavit and which is at variance with the averments of



the pleadings. Secondly, and guided by the provision of Order 2 Rule 13 of the Civil procedure Rules, which holds:-

“The pleadings in a Suit shall be closed fourteen (14) days after service of the reply or defence to Counter – Claim or if neither is and fourteen (14) days after service of the Defence, notwithstanding that any order or request for particulars has been made but not complied with” and as already stated the pleadings in this case closed a while ago.

25. Clearly, this then becomes an orthodox manner of conducting business as it is introducing a Counter – Claim while all the pleadings have closed taking that the pleadings closed two years ago through a back door. Thirdly, while a Counter – Claim may be allowed to be filed by a party it should be in conformity of the provision of Order 7 Rules, 1, 2, 3, 4 and 5 of the Civil Procedure Rules, 2010. Indeed Order 7 Rules 5 states as follows:

“The Defence and Counter – Claim filed under Rules 1 and 2 shall be accompanied by:-

- a. An affidavit under Order 4 Rule 1 (2) where there is a Counter – Claim;
- b. A List of witnesses to be called at the trial;
- c. Written statements to be called at the trial;
- d. Copies of documents to be relied on at the trial

Provided that statements under sub – rule (c) may with leave of the Court be furnished at least fifteen (15) days prior to the trial conference under Order 11 of the Civil Procedure”

Certainly, the 4th Defendant/Applicant has not accomplished all these requirements for whatever its worth and taking that this ought to have happened during the already conducted Pre – Trial Conference by all the parties as commanded and required under the provision of Order 11 of the Civil Procedure Rules, 2010. On the contrary, had the Counter – Claim been filed already and in existence, then the Amendment sought would not be an issue at all. The upshot of the foregoing is that this is a case of closing the stable while the horse has already bolted. To allow that to happen at this stage of the proceedings would tantamount to re – opening the case equating it to what the English Philosopher Thomas Hobbes once stated the situation would be “Short, Nasty and Bruitish”. It should not be allowed to happen in our sound Judicial and litigation system as the same is a nullity, scandalous, frivolous and an abuse of the due process of the law.

26. Be that as it may, taking that this court has to serve substantive justice and balance the interest of all parties, the application herein is found to have merit but strictly only granting the reliefs sought without an element of introducing a Counter – Claim at this stage.

Issue No. b). Who bears the costs of the Notice of Motion application dated 6th May, 2024

27. It is now well established that the issue of Costs is a discretion of the Court. Costs mean the award a party is awarded at the conclusion of a legal action or proceedings in any litigation. The provision of Section 27 (1) of the *Civil Procedure Act*, Cap. 21 holds that costs follow the events. By event it means the results or outcome of the legal action or proceedings. See the decisions of Supreme Court “Jasbir Rai Singh – Versus - Tarchalan Singh” eKLR (2014) and Cecilia Karuru Ngayo – Versus - Barclays Bank of Kenya Limited, eKLR (2014). In this case, the Court elects not to award any costs.



VII. Conclusion & Disposition

28. The Upshot of this is that the has made put a case to have partially and thus, for avoidance of doubt, I therefore proceed to make the following findings:
- a. That the Notice of Motion Application dated the 6th May, 2024 be and is hereby found to have merit and is allowed strictly onto the prayers sought.
 - b. That the 4th Defendant/Applicant be granted leave to file and serve her Amended Defence within 15 days of this ruling.
 - c. That thereafter the Plaintiff/Respondent be granted corresponding leave of 15 days to file and serve their respective responses to the Amended defence.
 - d. That for expediency sake, the matter to be heard on 12th November, 2024 for the Defence case.
 - e. That there shall be no orders as to costs.

It Is Ordered Accordingly.

RULING DELIEVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 30TH DAY OF JULY 2024.

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**HON. MR. JUSTICE L.L. NAIKUNI,
ENVIRONMENT & LAND COURT AT
MOMBASA**

Ruling delivered in the presence of:

- a. M/s. Firdaus Mbula, the Court Assistant.
- b. Mr. Asige Advocate for the Plaintiff/Respondent.
- c. Mr. Wameyo Advocate for the 4th Defendant

