



**Mugambi & another (Suing as the legal representatives of Raphael  
Mugambi) & 6 others v Opiyo & 14 others (Environment & Land Case  
E018 of 2022) [2024] KEELC 5315 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5315 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E018 OF 2022**

**CK YANO, J  
JULY 18, 2024**

**BETWEEN**

**CECILIA NYOROKA MUGAMBI & LUCY MUGAMBI (SUING AS THE LEGAL  
REPRESENTATIVES OF RAPHAEL MUGAMBI) ..... 1<sup>ST</sup> PLAINTIFF  
ALICE MUGAMBI ..... 2<sup>ND</sup> PLAINTIFF  
JAMES MBURUGU MUGAMBI ..... 3<sup>RD</sup> PLAINTIFF  
FELICITY KANANA MAINGI (SUING AS THE LEGAL REPRESENTATIVE OF  
THE ESTATE OF FRANCIS MAINGI) ..... 4<sup>TH</sup> PLAINTIFF  
SILAS MWOBODIA MBUI ..... 5<sup>TH</sup> PLAINTIFF  
AMBROSE MUNYUA ..... 6<sup>TH</sup> PLAINTIFF  
SEBASTIAN NGARE MUGUONGO ..... 7<sup>TH</sup> PLAINTIFF**

**AND**

**ANDREW ODERO OPIYO ..... 1<sup>ST</sup> DEFENDANT  
SHADRACK MWITI MUGUNA ..... 2<sup>ND</sup> DEFENDANT  
JOSEPH MUNYUA MURIUKI ..... 3<sup>RD</sup> DEFENDANT  
LAWRENCE KIAUTHA ARITHI ..... 4<sup>TH</sup> DEFENDANT  
ZIPPORAH K. KIAUTHA ..... 5<sup>TH</sup> DEFENDANT  
JORAM GICHINGA KAMENCU ..... 6<sup>TH</sup> DEFENDANT  
ISAAC KAIMENYI ..... 7<sup>TH</sup> DEFENDANT  
SAMWEL KATHURIMA RINGERA ..... 8<sup>TH</sup> DEFENDANT  
JANET MUKIRI MWENDA ..... 9<sup>TH</sup> DEFENDANT**



<b>CO-OP BANK LTD .....</b>	<b>10<sup>TH</sup> DEFENDANT</b>
<b>CREDIT BANK LIMITED .....</b>	<b>11<sup>TH</sup> DEFENDANT</b>
<b>THE COUNTY GOVERNMENT OF MERU .....</b>	<b>12<sup>TH</sup> DEFENDANT</b>
<b>LAND REGISTRAR, MERU COUNTY .....</b>	<b>13<sup>TH</sup> DEFENDANT</b>
<b>THE HON. ATTORNEY GENERAL .....</b>	<b>14<sup>TH</sup> DEFENDANT</b>
<b>JASON MWENDA MATHIU .....</b>	<b>15<sup>TH</sup> DEFENDANT</b>

## RULING

1. The application for consideration is the notice of motion dated 29<sup>th</sup> January, 2024 by the plaintiffs/ applicants seeking leave of the court to amend their plaint dated 15<sup>th</sup> September, 2022 and filed in court on 19<sup>th</sup> September, 2022. The application is brought pursuant to the provisions of Order 8 Rule 3(1) Order (1), Order 51 Rules 1,3 and 4 of the civil Procedure Rules 2010, Sections 1A, 1B and 3A of the Civil Procedure Act and all other provisions of the law.
2. The application is supported by the affidavit of Alice Mugambi sworn on 29<sup>th</sup> January, 2024 and a supplementary affidavit sworn on 16<sup>th</sup> February, 2024 and is based on the grounds that the pleadings in the suit are closed and the plaintiffs are desirous of amending their plaint and that the intended amendment cannot be effected without leave of court. That the amended plaint is for the purposes of assisting the court to determine the real issues and/or questions in controversy between the parties in the suit. The plaintiffs aver that no party or parties in the suit shall suffer any prejudice if the orders sought in the application are granted.
3. Pursuant to leave of court granted on 13<sup>th</sup> February, 2024, the plaintiffs filed the aforesaid supplementary affidavit in which the deponent has annexed a draft amended plaint marked ‘AM 1’. In the draft amended plaint, the plaintiffs seek to amend the plaint by inter alia, indicating that Cecilia Nyoroka Mugambi and Lucy Karimi Mugambi are suing as the legal representatives of Raphael Mugambi, deleting the names of Alice Mugambi, James Mburugu Mugambi and Ambrose Munyua and indicating that Felicity Kanana Maingi is suing as the legal representative of the estate of Francis Maingi and by adding the name of Jason Mwenda Mathiu as the 15<sup>th</sup> Defendant.
4. The application is opposed by the 1<sup>st</sup> to 9<sup>th</sup> defendants/respondents who filed a replying affidavit sworn by Lawrence Kiautha Arithi, the 4<sup>th</sup> Defendant, on 12<sup>th</sup> February, 2024. The Deponent states that the applicants have not attached the draft amended plaint and therefore the respondents are in the dark as to what is to be amended. That the application is therefore misconceived and should be dismissed with costs. It is further stated that the 1<sup>st</sup> to 9<sup>th</sup> respondents shall suffer prejudice if the orders sought in the application are granted, adding that this is an old matter where the applicants are not keen on prosecuting and have employed every trait to delay the same.
5. The rest of the respondents did not file responses.
6. The court has considered the application and the response filed. In their replying affidavit, the 1<sup>st</sup> to 9<sup>th</sup> respondents aver that the applicants have not attached a draft amended plaint. However, I note that pursuant to leave granted by the court on 13<sup>th</sup> February, 2024, the applicants filed the supplementary affidavit dated 16<sup>th</sup> February, 2024 wherein they have annexed a draft of the amended plaint. The court will therefore proceed to determine the application with that in mind.



7. This is an application for amendment of the plaint herein. The courts will normally allow amendments of pleadings at any stage of the proceedings if it can be done without occasioning injustice or prejudice to the other party/parties and on such terms as to costs or otherwise as may be just. Order 8 Rule 3 of the Civil Procedure Rules provides as follows:-

“3.

- (1) Subject to Order 1 Rules 9 and 10, Order 24 Rules 3,4,5 and 6 and the following provisions of this Rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such matter as it may direct, allow any party to amend his pleading.
- (2) Where an application to the court for leave to make an amendment such as mentioned in sub rule (3) and (4) or (5) is made after any relevant period of limitation current at the date of filing the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such sub-rule if it thinks just so to do.
- (3) An amendment to correct the name of a party may be allowed under sub-rule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of other person intending to sue or intended to be sued.”

8. The general power to amend pleadings is donated by section 100 of the [Civil Procedure Act](#) and is provided for under Order 8 rule 5 of the Civil Procedure Rules which states as follows;

“5

- (1) 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 motion or 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.”

9. It is clear from the above provisions of the law that the court has discretionary power to amend pleadings at any stage before judgment for purposes of determining the real question or issue between the parties. That discretionary power must however be exercised judiciously and not whimsically. It is also clear that the court may, in its discretion, allow the amendment to correct the name of a party notwithstanding that the effect of such an amendment will be to substitute a new party.

10. As already stated, in this case, the plaintiffs seek to amend some of their names to indicate that they are suing as legal representatives of the estate of some deceased persons, have some of the plaintiffs' names deleted and add one Jason Mwenda Mathiu as the 15<sup>th</sup> defendant. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>,



8<sup>th</sup>, and 9<sup>th</sup> respondents have not demonstrated what prejudice, if any they will suffer if the application for amendment is allowed. On the contrary, if such leave to amend is granted, it would allow the proper description of the plaintiffs who are suing as the legal representatives of the estate of deceased persons and to being an additional defendant to the suit and a multiplicity of legal proceedings avoided. I fail to see what injustice could result to the respondents or any of them by allowing the amendments. The trial has not started. The respondents can adequately be compensated by costs.

11. In this regard, I would do no more than quote a passage from the judgment of Sir Kenneth O'Connor, President of the court of appeal for Eastern Africa (as he then was) in the case of Eastern Bakery and Castalino (1958) EA 461 at page 462 letter C in which he refers a host of authorities:

“It will be sufficient, for purposes of the present case to say that amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side and that there is no injustice if the other side can be compensated by costs...”

12. Accordingly, and for the foregoing reasons, I allow the notice of motion dated 29<sup>th</sup> January, 2024 as prayed. The plaintiffs are directed to file and serve the amended plaint within 14 days of this ruling. I also give the defendants 14 days from the date of service to file amended defences, if any.
13. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 18<sup>TH</sup> DAY OF JULY, 2024.**

In the presence of

Court assistant

Ms Kerubo for 1<sup>st</sup> – 9<sup>th</sup> respondents

Kaumbi holding brief for Omari for plaintiff

**C.K YANO**

**JUDGE**

