



**Scorpion Properties Ltd & another v Mody & 8 others (Environment and Land Case Civil Suit 2156 of 2007 & Civil Suit 1727 of 2002 (Consolidated)) [2024] KEELC 6400 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6400 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT  
2156 OF 2007 & CIVIL SUIT 1727 OF 2002 (CONSOLIDATED)**

**LN MBUGUA, J**

**SEPTEMBER 26, 2024**

**BETWEEN**

**SCORPION PROPERTIES LTD ..... PLAINTIFF**

**AND**

**P.I MODY ..... 1<sup>ST</sup> DEFENDANT**

**ROBERT OTACHI ..... 2<sup>ND</sup> DEFENDANT**

**THE NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**THE COUNTY GOVERNMENT OF NAIROBI ..... 5<sup>TH</sup> DEFENDANT**

**TONIE LESLIE WESONGA ..... 6<sup>TH</sup> DEFENDANT**

**AS CONSOLIDATED WITH**

**CIVIL SUIT 1727 OF 2002**

**BETWEEN**

**KENYA WINE AGENCIES LIMITED ..... PLAINTIFF**

**AND**

**HINA HARJI VARSANI ..... 1<sup>ST</sup> DEFENDANT**

**VERBAL DHANJI VARSANI ..... 2<sup>ND</sup> DEFENDANT**

**THE COMMISSIONER OF LANDS ..... 3<sup>RD</sup> DEFENDANT**



## RULING

1. The 6<sup>th</sup> Defendant in civil suit No. 2156 of 2007 filed the Notice of Motion Application dated 25.6.2024 seeking leave to further amend his amended defence and counterclaim. The application is premised on grounds on its face and on the 6<sup>th</sup> Defendant's supporting affidavit sworn on 25.6. 2024 where he avers that he is the registered proprietor of LR No. Block 91/217. He contends that the Attorney General has filed a voluminous bundle of documents and witness statements which have raised salient issues on the procedure and process of acquisition of the suit land. That since the said documents were filed long after he had filed his amended defence and counterclaim, there is need for him to file a further amended defence and counterclaim to include a prayer for compensation for the current value of the said property in case it reverts back to the government. He avers that the said amendments do not introduce a new cause of action and that the Plaintiff will not suffer prejudice.
2. The application is unopposed.
3. The 6<sup>th</sup> Defendant filed submissions dated 5.8.2024 in which he urges the court to exercise its discretion under Order 8 Rule 3 & 5 of the *Civil Procedure Rules* and allow the amendments. The case of *John Nyagaka Osoro v Reynold Karisa Charo & 5 others* [2021] eKLR is relied upon.
4. I have considered the issue raised herein as well as the submissions of the applicant. The provisions of Order 8 Rules 3 and 5 of the *Civil Procedure Rules* gives this court discretion to allow amendments at any stage of the proceedings in order to bring forth all the issues in dispute.
5. This suit is yet to take off. The court has considered that all the parties herein are not opposed to the application, thus the amendments sought will not occasion them prejudice. The court has also considered that the amendments do not introduce new issues.
6. In granting the orders sought, the court is persuaded by the holding of the court in *Springbox Kenya Ltd v Daniel Kulanga Nthusa* [2015] eKLR where it was stated that;

“It will be sufficient 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.”
7. In the final analysis, the application dated 25.6.2024 is allowed as drawn. However, the further amended defence and counter claim is to be filed and served within 14 days from the date of this ruling.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

M/s Kendi holding brief for Okongo Mogeni for plaintiffs

Githui for 1<sup>st</sup> Defendant

Gitanda for 2<sup>nd</sup> Defendant

A.Kamau for 4<sup>th</sup> Defendant

Nyakoe for 5<sup>th</sup> Defendant



Ayecko for 6<sup>th</sup> Defendant

Court assistant: Joan

