



REPUBLIC OF KENYA



KENYA LAW
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Cherop v Bowen (Civil Case E009 of 2022) [2025] KEHC 4064 (KLR) (28 March 2025) (Ruling)

Neutral citation: [2025] KEHC 4064 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE E009 OF 2022
RN NYAKUNDI, J
MARCH 28, 2025**

BETWEEN

SHARON JEMUTAI CHEROP PLAINTIFF

AND

MATHEW BOWEN DEFENDANT

RULING

1. By a Notice of Motion dated 26th November, 2024 the Plaintiff/Applicant seeks orders as follows:
 - a. That the Plaintiff/Applicant herein be granted leave to amend her originating summons by including 1/8 of an acre comprised in L.R. No. Iten/Tambach Town Council Plot No. 1010.
 - b. That the annexed originating summons be deemed as properly filed and served subject to payment of the requisite filing fees, if applicable.
 - c. That the Plaintiff's supplementary list of documents filed herewith be deemed as properly served subject to payment of the requisite filing fees, if applicable
2. The application is supported by an affidavit sworn by Sharon Jemutai Cherop and on grounds that:
 - a. That the Plaintiff instituted the suit for distribution of the parcels of land forming the substratum of the suit.
 - b. That the Plaintiff could not include L.R No. Iten/Tambach Town Council Plot No. 1010 as she was unable to trace the ownership documents at the time of filing the suit.
 - c. That the ownership documents have since been traced hence rendering inclusion of the said property necessary.
 - d. That the intended amendment is necessary to enable this honorable court determine the real issues in controversy between the parties with finality.



- e. That no prejudice will be suffered by the Respondent as he will be at liberty to file a response if the amendment is allowed
3. The application is unopposed as the Respondent has not filed response. However, in accordance with established legal practice, this court is obligated to consider the substantive merits of the application rather than granting it solely on the basis of non-opposition. The court must satisfy itself that the application meets the threshold requirements for amendment of pleadings as provided under Order 8 Rule 3(1) of the Civil Procedure Rules, which permits amendments at any stage of proceedings where such amendments are necessary for determining the real questions in controversy between the parties.

Analysis and determination

4. The main issue for determination is whether this court should exercise its discretion in the Plaintiff's favour and grant her leave to amend his Pleadings.
5. Order 8 Rule 3 of the Rules provides for amendment of pleadings with leave of court as follows:
 - (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 manner as it may direct, allow any party to amend his pleadings.
6. Further, Order 8 Rule 5 of the Rules gives the court the general power to amend pleadings thus:
 - “5. 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 document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”
7. To allow an amendment sought, the court must examine both the intent and purpose of the amendment to determine whether it serves the interests of justice. The court must assess whether the amendment is necessary for the proper adjudication of the real issues in controversy between the parties, or merely represents a dilatory tactic. Additionally, the court is obligated to consider whether any prejudice will be suffered by the opposing party should the amendment be allowed, and if such prejudice exists, whether it can be adequately compensated through an appropriate costs order.
8. In the case of *Institute for Social Accountability & another v Parliament of Kenya & 3 others* [2014] eKLR the court held:
 - “The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings....The court will normally allow parties to make such amendments as may be necessary for determining the real questions in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, no new or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that the amendment can be allowed without an injustice to the other side.”



9. The Court of Appeal outlined the principles in amendment of pleadings in *Elijah Kipngeno Arap Bii vs Kenya Commercial Bank Limited* (2013) eKLR, among others.as follows:

“The law on amendment of pleading in terms of section 100 of the *Civil Procedure Act* and Order VIA rule 3 of the repealed Civil Procedure Rules under which the application was brought was summarized by this Court, quoting from Bullen and Leake & Jacob’s *Precedents of Pleading – 12th Edition*, in the case of *Joseph Ochieng & 2 others vs. First National Bank of Chicago, Civil Appeal No. 149 of 1991* as follows:

“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 plaint the defendant would be deprived of his right to rely on Limitation Acts.”

10. The legal parameters governing the amendment of pleadings from the above cited cases can be summed up that the amendment should:
- a. Not introduce new or inconsistent cause of actions or issues;
 - b. Be made timeously;
 - c. Not affect any vested interest or accrued legal right and
 - d. Not prejudice or cause injustice to the other party.
11. Turning to the application at hand, I must analyze whether it satisfies the established legal parameters for amendment of pleadings as enumerated above. The first consideration is whether the proposed amendment introduces new or inconsistent causes of action or issues.
12. From the materials placed before me, the Plaintiff/Applicant seeks to amend her originating summons to include an additional parcel of land, specifically 1/8 of an acre comprised in L.R. NO. ITEN/TAMBACH TOWN COUNCIL PLOT NO. 1010. The original suit was instituted for distribution of parcels of land forming the substratum of the suit. The amendment, therefore, does not appear to introduce a new cause of action but rather augments the existing claim by including an additional property within the same distribution dispute.
13. With respect to timeliness, the Plaintiff has provided a reasonable explanation for the delayed inclusion of this property. According to her affidavit, she was unable to trace the ownership documents at the time of filing the suit. These documents have since been located, prompting the current application. This explanation suggests that the application is made in good faith and without undue delay relative to the discovery of the relevant documentation.



14. The third parameter concerns whether the amendment would affect any vested interest or accrued legal right. There is no indication from the materials before this court that allowing the amendment would prejudice any vested rights of the Respondent in relation to the property in question. The dispute appears to center on the distribution of various parcels of land, and the inclusion of an additional parcel maintains the fundamental character of the proceedings.
15. Finally, I must consider whether the amendment would cause prejudice or injustice to the Respondent. The application is unopposed, which suggests an absence of perceived prejudice on the Respondent's part. Furthermore, as noted in the Plaintiff's grounds, the Respondent will have the liberty to file a response to the amended pleadings if the amendment is allowed.
16. It is also pertinent to note that denying the amendment could potentially lead to a multiplicity of suits, as the Plaintiff might be compelled to institute separate proceedings regarding the omitted property. This would run counter to the judicial policy of avoiding unnecessary litigation and ensuring the comprehensive resolution of disputes between parties.
17. Taking all these factors into consideration, I find that the amendment sought aligns with the principles established in Order 8 Rules 3 and 5 of the Civil Procedure Rules. It appears necessary for determining the real questions in controversy between the parties and would facilitate the just, expeditious, and economical resolution of the dispute.
18. Based on the foregoing analysis, I am inclined to allow the application. The amendment sought meets the established legal parameters, is made in good faith, and will enable this court to make a comprehensive determination of the distribution dispute concerning all relevant properties.
19. In the result, I hereby order as follows:
 - a. The Plaintiff/Applicant is granted leave to amend her originating summons by including 1/8 of an acre comprised in L.R. No. Iten/Tambach Town Council Plot No. 1010.
 - b. The annexed originating summons is deemed as properly filed and served subject to payment of the requisite filing fees, if applicable within 14 days from this ruling.
 - c. The Defendant/Respondent shall in turn have 14 days to put in any necessary amendments.
 - d. The Plaintiff's supplementary list of documents filed herewith is deemed as properly filed subject to payment of the requisite filing fees, if applicable. The same shall be served upon the defendant/respondent within 14 days of this ruling.
 - e. The status conference to be held on 9th of May, 2025
 - f. Each party shall bear their own costs.
20. Orders accordingly.

DATED SIGNED AND DELIVERED VIA CTS AT ELDORET, THIS 28TH DAY OF MARCH 2025

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R. NYAKUNDI
JUDGE

