



REPUBLIC OF KENYA



**KENYA LAW**  
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**Malik v Kinuthia & another (Environment & Land Case  
104B of 2017) [2023] KEELC 654 (KLR) (13 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 654 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 104B OF 2017  
FM NJOROGE, J  
FEBRUARY 13, 2023**

**BETWEEN**

**MOHAMMED YUNUS MALIK ..... PLAINTIFF**

**AND**

**JAMES KINUTHIA ..... 1<sup>ST</sup> DEFENDANT**

**NAKURU DISTRICT LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of the plaintiff's unopposed notice of motion application dated January 23, 2023 seeking the following orders:
  1. ...Spent.
  2. That this honorable court do grant leave to the applicant to further amend the plaint.
  3. That the costs of this application be provided for.
2. The application is supported by the affidavit sworn on January 23, 2023 by Mohammed Yunis Malik the plaintiff herein. He deposed that he is the registered owner of the parcel of land known as Nakuru Municipality Block 16/28; that he instituted the instant suit after the 1<sup>st</sup> respondent encroached on the access road at the front of the suit parcel by constructing a five storey structure to completion; that the 1<sup>st</sup> respondent in cahoots with the Nakuru County Government officials specifically the physical planning department unlawfully approved the construction despite it being a road reserve; that it is imperative that the Nakuru County Government be enjoined in the matter for full and conclusive determination; that the issues raised in terms of compliance with the requirements of the physical planning department can only be addressed by the Nakuru County Government; that no prejudice will be caused to any party if the said orders are granted. There are no submissions on record filed by any of the parties.



## Analysis And Determination

3. This court has considered the application and supporting affidavit and the only issue for determination is whether the plaintiff ought to be granted leave to amend his plaint.
4. Order 8 rule 3 (1) of the *Civil Procedure Rules* provides that:

“Subject to order 1 rules 9 and 10. Order 24 rule 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.”
5. In the case of *Institute for Social Accountability & Another v Parliament of Kenya & 3 others [2014] eKLR*, Lenaola, Mumbi and Majanja JJ while determining whether to allow the petitioner to amend their consolidated petitions the court observed that:

“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.”
6. Further, in the case of *Suleiman v Karasha [1989] eKLR* the Court of Appeal held that:

“Under the *Civil Procedure Rules*, the parties can amend their pleading with the leave of the court at any time before judgment. Such amendment would clearly set the issues in dispute to enable the Court to arrive at a just decision. It does not matter if the hearing has been concluded but the court has to consider the application for amendment and give effect to it as it may deem just.”
7. It is clear that this court has discretion in dealing with an application to amend pleadings unless the other side is able to demonstrate that they would seriously be prejudiced by the proposed amendment.
8. In the present case, the plaintiff seeks to enjoin the County Government of Nakuru as the 3<sup>rd</sup> defendant. He claims that it is a necessary party to the suit as it unlawfully approved the said construction. He added that enjoining the County Government would assist the court arrive at a just and conclusive determination.
9. The defendants did not file any response to oppose the application. Having carefully considered the application, pleadings as well as the law on amendment of pleadings, I am of the view that the application January 23, 2023 is merited and I therefore allow it and join the County Government of Nakuru as the 3<sup>rd</sup> defendant in the present suit.
10. I further direct that an amended plaint with the 3<sup>rd</sup> defendant as “County Government of Nakuru” shall be filed and served together with summons upon the 3<sup>rd</sup> defendant
11. The defendants shall file and serve their amended defences, if need be, within 15 days from the date of service. The present defendants shall have costs of this application. This suit shall be mentioned on February 14, 2023 for directions.

**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 13<sup>TH</sup> DAY OF FEBRUARY 2023.**



**MWANGI NJOROGE**  
**JUDGE, ELC, NAKURU.**

