



**Rogito v Mogaka & another (Environment & Land Case
84 of 2017) [2023] KEELC 18385 (KLR) (22 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18385 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 84 OF 2017
GMA ONGONDO, J
JUNE 22, 2023**

BETWEEN

GIDEON ANUNDA ROGITO PLAINTIFF

AND

ANGELIUS GUTO MOGAKA 1ST DEFENDANT

CHARLES O MOGOSI 2ND DEFENDANT

(On amendment of Plaintiff)

RULING

1. The application before me is that dated 7 December 2022 seeking to amend the plaintiff. The application is based on the ground that there is an error in the plaintiff that needs amendment. Nothing has been filed to oppose the application and I have given it due consideration.
2. I observe that the application is supported by an affidavit sworn by A.N Oeri who happens to be counsel acting for the plaintiff. At the outset, I need to state that it is untidy and not advisable for counsel to swear such an affidavit for the case belongs to the party. It is the party who needs to swear the affidavit to point out what problem he has discovered in his pleading that requires amendment. Be that as it may, I have gone through the affidavit which does not really say what error there is in the plaintiff, only that there is reference to a draft amended plaintiff. I have gone through the draft amended plaintiff. I see that in the original plaintiff, the plaintiff did state that the plaintiff has sued as owner of the Plot No. 15 Nyanchwa. His claim is that the 1st and 2nd defendants own the plots No. 14 and 16 Nyanchwa and that they have unlawfully trespassed into his Plot No. 15. What the amendment seeks to introduce is to state that these plots No. 14, 15, and 16 Nyanchwa, are now titled as Kisii Municipality Block I/ 506, 507 and 108 respectively. The claim for trespass and encroachment remains though there is more elaboration on the area said to be interfered with.



3. Despite my misgivings on counsel swearing the affidavit, I see no prejudice to the defendant if the application is allowed.
4. I will therefore proceed to allow the application and direct that the amended plaint be filed within the next 14 days and be served in the usual manner. I make no orders as to costs.
5. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 22 DAY OF JUNE 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

