



**Kariuki v Nyaga & 2 others (Environmental and Land Originating
Summons 11 of 2020) [2025] KEELC 3653 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3653 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 11 OF 2020**

AK BOR, J

APRIL 29, 2025

BETWEEN

ALICE NJOKI KARIUKI PLAINTIFF

AND

MOSES GICOVI NYAGA 1ST DEFENDANT

PHYLIS MUTHONI CHAMBARI 2ND DEFENDANT

LAND REGISTRAR, EMBU 3RD DEFENDANT

RULING

1. The Plaintiff brought the application dated 23/1/2025 seeking leave to amend the Originating Summons dated 28/3/2024 further so as to include Faith Wandiri Nthiga and Stephen Njenga Ruge as the 4th and 5th Defendants in terms of the amended draft which she attached to the application. She sought leave to file the further amended originating summons within 14 days of the court orders and for costs of the application to be in the cause.
2. The application was made on the grounds that the current advocate for the Plaintiff came on record on 10/11/2022 and that upon perusal of the 3rd Defendant's replying affidavit to the summons, the advocate realised that the Registrar of Lands Embu had cited Faith Wandiri Nthiga and Stephen Njenga Ruge who are necessary parties to the suit as they were directly involved in the fraudulent transfer and registration of the suit land to the 2nd Defendant. She averred that it was necessary to further amend the originating summons for the effective adjudication of all issues and that the amendments sought would enable the court determine the dispute effectively. She contended that the Defendants will not suffer any prejudice by the proposed amendment and that it was in the interest of justice that the application be allowed. The Plaintiff swore the affidavit in support of the application and attached a draft further amended originating summons.



3. The 1st Defendant filed a replying affidavit opposing the application. He contended that the application should be dismissed because the Plaintiff is not and has never been in occupation of the land known as Ngandori/Kirigi/13724, the suit land. He averred that he sold the suit land to Stephen Njenga Ruge who was in occupation. He averred that the proposed Amended Originating Summons seeks to join parties in a case of adverse possession some of whom were not the registered owners. He contended that there was confusion on the cause of action in the suit as the originating summons is for adverse possession yet the present application speaks to fraud. He expressed concern that the proposed amendments would bring confusion in the proceedings and urged that the application should be dismissed with costs.
4. The issue for determination is whether the Plaintiff should be granted leave to further amend the originating summons. Order 8 Rule 5(1) of the Civil Procedure Rules grants the court general power to allow amendments to pleadings to facilitate the determination of the real issues in controversy or to correct any defect or error in proceedings. The court has the discretion to permit such amendments either on its own motion or upon application by a party, subject to terms as to costs or other conditions deemed just.
5. Order 1 Rule 10 (2) of the Civil Procedure Rules provides that at any stage of the proceedings, the court may either upon or without the application of either party, order the name of any party who ought to have been joined to be added as a party for the purpose of enabling the court to effectively and completely adjudicate upon and settle all questions involved in the suit.
6. The court is persuaded that the joinder of the proposed 4th and 5th Defendants, that is Faith Wandiri Nthiga and Stephen Njega Ruge, is justified since they are the first and current registered proprietors of the suit land respectively. This being a suit for adverse possession, then they would be necessary parties in shedding light on some of the issues that may arise in terms of the Plaintiff's occupation and or possession of the suit land. Furthermore, no evidence has been tendered to show that the Defendants would suffer prejudice that cannot be compensated by an award of costs if the amendments are allowed.
7. The court allows the application dated 23/1/2025 and directs that the originating summons be amended in line with Order 8 rule 7 of the Civil Procedure Rules.
8. The Plaintiff shall file and serve the further amended originating summons within 7 days. The costs of the application shall be in the cause.

DELIVERED VIRTUALLY AT EMBU THIS 29TH DAY OF APRIL 2025.

K. BOR

JUDGE

In the presence of: -

Ms. W. Kamochu holding brief for the 1st Defendant

Mr. Justin Kiongo for the 3rd Defendant

Court Assistant- Diana Kemboi

No appearance for the Plaintiff and the 2nd Defendant

