



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kidula v Opondo (Environment & Land Case 58 of 2020)  
[2022] KEELC 3529 (KLR) (18 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3529 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 58 OF 2020**

**EO OBAGA, J**

**MAY 18, 2022**

**BETWEEN**

**PATRICK BARAZA KIDULA ..... PLAINTIFF**

**AND**

**CAROLINE OPONDO ..... DEFENDANT**

**RULING**

1. This is a ruling in respect of a notice of motion dated March 10, 2021 in which the applicant seeks leave to amend the originating summons. The applicant contends that at the time he filed the originating summons herein, he indicated the parcel Numbers as 8451/15 and 8451/16 measuring 14 acres instead of Pioneer/Ngeria Block 1 (Eatec) 6060 measuring 1.2 hectares. He states that this was due to inadvertence. He further states that the amendment will not prejudice the respondent in any way as a party is at liberty to amend his/her pleadings before judgment.
2. The respondent opposed the applicant's application based on a replying affidavit sworn on November 15, 2021. The respondent states that the amendment was prompted by her replying affidavit to the originating summons. The respondent further contends that the applicant is seeking to change the substratum of his claim instead of filing a fresh suit and withdrawing the present one.
3. I have considered the applicant's application as well as the opposition thereto by the respondent. I have also considered the submissions by the parties. The only issue for determination is whether the applicant has shown that there is need to be allowed to amend the originating summons. The law on amendment of pleadings is that amendments sought should be freely allowed if they cannot cause any prejudice to the other party and where the other party can be compensated by costs. See *Central Kenya Limited -vs- Trust Bank Kenya Limited & 5 others* (2000) eKLR.
4. In the instant case, the applicant had based his claim on Land reference Nos. 8451/15 and 8451/16. When the Respondent filed a replying affidavit and indicated that her land is Pioneer Ngeria Block



1 (Eatec) 6060, it became necessary for the applicant to amend the originating summons. The amendment is not introducing any new cause of action. It is merely seeking to correct the description of the suit property. This amendment will not prejudice the respondent in any way. It will not be in keeping with the overriding objective of the court to deny the applicant amendment forcing him to withdraw the suit and file a fresh one. The respondent can be compensated by an award of costs. I therefore find that the applicant's application is merited. I allow it and direct that the applicant files an amended originating summons within 14 days. The Applicant shall pay the Respondent costs of Kshs 15,000/=

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18<sup>TH</sup> DAY OF MAY, 2022.**

**E. OBAGA**

**JUDGE**

In the virtual presence of;

Ms. Too for defendant

Ms. Odwa for Respondent

Court Assistant –Albert

**E. OBAGA**

**JUDGE**

18<sup>TH</sup> MAY, 2022\*\*

