



**Seventh Day Adventist Church (E.A) v Saina & 7 others (Environment & Land
Case 120 of 2021) [2022] KEELC 4871 (KLR) (20 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 4871 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 120 OF 2021
MN MWANYALE, J
SEPTEMBER 20, 2022**

BETWEEN

SEVENTH DAY ADVENTIST CHURCH (E.A) APPLICANT

AND

**CHRISTOPHER K. SAINA 1ST RESPONDENT
JOSEPH KOGO 2ND RESPONDENT
JULIA BIRIR 3RD RESPONDENT
MOSES OCHOLA 4TH RESPONDENT
NATIONAL LAND COMMISSION 5TH RESPONDENT
LAND REGISTRAR, NANDI COUNTY 6TH RESPONDENT
COUNTY GOVERNMENT 7TH RESPONDENT
ATTORNEY GENERAL 8TH RESPONDENT**

RULING

1. This ruling is in respect of the Notice of Motion application dated 30th May 2022 seeking that the Applicant be granted leave to further amend its plaint by replacing the 3rd Defendant Julia Birir with Priscillah Jepkemboi; and a further prayer that the annexed draft further amended plaint be deemed as properly filed and served subject to payment of requisite Court filing fees.
2. The grounds in support of the application is that the person who ought to have been sued as 3rd Defendant is Priscillah Jepkemboi as opposed to the current 3rd Defendant Julia Birir.



3. The Application is further supported by the annexed Supporting Affidavit of the Advocate Ms. Isiaho Sawe; who reiterates the grounds in support of the application and specifically depones that the amendment is meant to determine the real issues in controversy.
4. Ms. Odeyo Counsel for 5th, 6th and 8th Defendants/Respondents as well as Ms. Kogo for the 7th Defendant are not opposed to the application however Mr. Ngigi Mbugua for the 1st and 2nd Defendants/Respondent opposed the Application.
5. A replying affidavit by the 1st Defendant was filed. In the said affidavit; the 1st Defendant in opposition to the application states the time for substitution has lapsed, since the certificate of lease was issued on July 2002.
6. Parties filed written submissions in respect of the application. I have considered the application before Court, the response to the application, the submissions and the law relation to substitution.
7. The suit herein was filed in Eldoret ELC in 2017 and transferred to Kapsabet ELC in 2021. The suit has not yet been heard although it is ready for hearing. The assertion by the Respondent that it has taken 20 years to bring in an application for substitution is therefore misleading.
8. An Amendment can be made at any stage of the suit before Judgment, so as to bring the real issued in dispute to the light.
9. I have also perused the draft amended plaint, and other than the substitution, no new cause of action against the 3rd Defendant has been pleaded.
10. The proposed 3rd Defendant shall have any opportunity to file a defence and plead Limitation of Actions, if need be, and it's not for the 1st and 2nd Defendants to plead that on her behalf.
11. Accordingly in order to bring the real issue in controversy to light. The Application for substitution is hereby allowed and the draft amended plaint is deemed as duly filed upon payment of Court fees.
12. The amended plaint to be served on the 3rd Defendant within 7 days from date hereof, the Defendant to enter appearance in line with the [*Civil Procedure Rules*](#).
13. Orders accordingly.

DATED AT KAPSABET THIS 20TH DAY OF SEPTEMBER, 2022.

HON. M. N. MWANYALE,

JUDGE

In the presence of;

Mr. Ngigi Mbugua for the 1st and 2nd Defendant/Respondents

Mr. Siboe holding brief for Ms. Isiaho Sawe for Plaintiff/applicant

