



**Sadira & another v Kipusi (Environment & Land Case E003 of 2021)
[2022] KEELC 13574 (KLR) (13 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13574 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE E003 OF 2021
EM WASHE, J
OCTOBER 13, 2022**

BETWEEN

SOINTA SADIRA 1ST APPLICANT

SANINGO SADIRA 2ND APPLICANT

AND

WILLIAM NUM OLE KIPUSI RESPONDENT

RULING

1. The 1st and 2nd plaintiffs (hereinafter referred to as “the applicants”) filed a Notice of Motion application dated January 31, 2022 (hereinafter referred to as “the present application”) seeking for the following orders; -
 1. The honourable court be pleased to grant leave to the plaintiff/applicants to amend their plead in this suit, in terms of the annexed draft amended plead, to clearly indicate the correct names for the plaintiffs/applicants.
 2. Consequent to prayer (1) hereinabove being granted the Court be pleased to have the draft amended plead herein annexed be deemed as duly filed and served upon payment of the requisite court fees.
 3. Costs of the application do abide the cause.
2. The grounds in support of these prayers are contained in the body of the present application and the Supporting Affidavit sworn by 2nd applicant on the January 31, 2021.
3. The court directed the present application to be served on the respondent but the respondent did not file any response thereof.



4. On the July 27, 2022, the Court directed parties to file submissions on the present application which the applicants complied but the Respondent failed to do so.
5. The issue before court is whether or not the applicants should be granted leave to amend their plaint dated October 25, 2015 (hereinafter referred to as “the plaint”.)
6. The applicants have pleaded in their supporting affidavit that the names indicated in the plaint are not their official names as contained in the title deed known as Transmara/Nkararo/291 (hereinafter referred to as “the suit property”).
7. The applicants have produced a Letter from their area chief dated October 19, 2021 indicating that the applicants names Sointa Sadira & Saningo Sadira refer to the same persons known as Joseph Lagake Saitera & Nolbarisho Pota Saidira respectively who are the registered owners of the suit property.
8. The applicants further produced an application For Correction of Names presented to the Local Land Control Board on the November 18, 2021 seeking the correction of the names Sointa Sadira & Saningo Sadira To Joseph Lagake Saitera & Nolbarisho Pota Saidira respectively.
9. The applicants annexed a copy of the Title Deed to the suit property in their legal names of No lbarisho Pota Saidira (ID No 8808147) And Joseph Lagake Saitera (ID No 11347369)
10. The Kenyan Identification Cards of both applicants Nolbarisho Pota Saidira (ID No 8808147) and Joseph Lagake Saitera (ID No 11347369) have also been produced before the Court.
11. An application under Order 8(3)(5) and (7) usually invokes the discretionary powers of the Court in determining the prayers therein.
12. The Court is guided by the decision in the Case of [*George Gikubu Mbutia v Consolidated Bank of Kenya Ltd & Another*](#) (2016) eKLR.
13. The Court in this authority held as follows; -

“Parties to a suit have the right to amend their pleadings at any stage of the proceedings before judgment and that courts should liberally allow such amendments.

There are situations when the court will refuse to exercise its discretion to allow amendments.

Such cases include where a new or inconsistent cause of action is introduced; where vested interests or accrued legal rights will be adversely affected; where prejudice or injustice which cannot be properly compensated in costs is occasioned to the respondent.”
14. Order 8(3)(3) of the [*Civil Procedure Rules*](#) provides as follows;

“An amendment to correct the name of a party may be allowed under Sub Rule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.”
15. Looking at the present application, the supporting Affidavit sworn on the January 31, 2022 by the 2nd applicant, the annexures thereof, the authority cited hereinabove and the provisions of the [*Civil Procedure Rules*](#), this Court is of the considered view that the present application has merit and should be granted so that the right owners to the suit property are correctly described in the plaint.



16. The Court is further of the view that no prejudice will be suffered by the Respondent if the amendments will be allowed as the same do not alter and/or change the cause of action or adversely affect the legal rights of the Respondent.
17. In conclusion therefore, the Court makes the following Orders as appertains the application dated January 31, 2022.
 - A. The plaintiffs/applicants are granted Fourteen (14) days to prepare, file and serve their Amended plaint on the Defendants thereof.
 - B. The Defendant is hereby granted leave of Fourteen (14) days upon service of the Amended plaint to prepare, file and serve their Defence and other supporting documents.
 - C. The plaintiffs/applicants shall have leave of Seven (7) Days upon service of the Defence and other supporting documents to file any response thereof.
 - D. Costs of the present application shall abide the outcome of the main suit.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON DAY OF 13TH OCTOBER 2022.

EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT:

ADVOCATES FOR THE appliCANT:

ADVOCATES FOR THE RESPONDENT:

