



REPUBLIC OF KENYA



KENYA LAW
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**Kimurata v Nkeiyua & 5 others (Environment & Land Petition
E001 of 2021) [2022] KEELC 15563 (KLR) (19 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15563 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND PETITION E001 OF 2021**

EM WASHE, J

DECEMBER 19, 2022

**IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLE 27, 28, 40 AND 47 OF THE CONSTITUTION
OF KENYA, 2010 AND IN THE MATTER OF THE CONTRAVENTION OF
RIGHT TO PROTECTION OF AN INDIVIDUAL'S RIGHT TO PROPERTY AND
FREEDOM FROM DISCRIMINATION, HUMAN DIGNITY AND RIGHT TO FAIR
ADMINISTRATIVE ACTION AND IN THE MATTER OF TRANSMARA/MEGUERA/44**

BETWEEN

CHRISTOPHER LEKODI KIMURATA PETITIONER

AND

WILLIAM LESHON NKEIYUA 1ST RESPONDENT

SOLOMON LEMAYIAN NKEIYUA 2ND RESPONDENT

**SENIOR PRINCIPAL MAGISTRATE, KILGORIS LAW COURT 3RD
RESPONDENT**

CHIEF LAND REGISTRAR, KILGORIS 4TH RESPONDENT

INSPECTOR GENERAL OF POLICE 5TH RESPONDENT

REGISTRAR OF SURVEY 6TH RESPONDENT

RULING

1. The 1st and 2nd Respondent (hereinafter referred to as “the Applicants”) have filed the Notice of Motion Application dated July 27, 2022 (hereinafter referred to as “the present application”) seeking for the following Orders; -



- i. The Honourable Court be pleased to grant leave to the 1st and 2nd Respondents/Applicants to amend their response to Petition and Cross-Petition to correct the name of the 1st Respondent/Applicant from William Leshon Nkeiyua to Wilson Lemashon Nkeiyua.
 - ii. The annexed draft amended response to Petition and Cross Petition be deemed as properly filed and served upon payment of the requisite court fees.
 - iii. Consequently to granting of prayer (1) above, all pleadings within the instant Petition be amended to reflect the name of Wilson Lemashon Nkeiyua as the 1st Respondent instead of William Leshon Nkeiyua.
 - iv. This Honourable Court be pleased to grant the 1st Respondent/Applicant leave to file any further affidavit and consequently be availed in Court for cross-examination.
 - v. Costs of this application be provided for.
2. The grounds in support of the prayers have been outlined in the body of the present application and the supporting affidavit of the 1st Defendant/Applicant sworn on July 27, 2022.
 3. In a nutshell, the grounds in support of the present application are as follows; -
 - a. The Petitioner herein indicated the name of the 1st Respondent/Applicant as William Leshon Nkeiyua.
 - b. However, the 1st Defendant's /Applicant's legal name is Wilson Lemashon Nkeiyua as provided in his Kenyan Identification Card No xxxx.
 - c. It is therefore imperative that the pleadings be amended from the name William Leshon Nkeiyua To Wilson Lemashon Nkeiyua so reflect the true and correct party to the suit.
 - d. In addition to the above, the 2nd Defendant/Applicant is seeking to be granted leave to file additional documents and/or further affidavits to present more evidence and issues that should be considered during the hearing and determination of the substantive suit because he is a co-owner of the property known as Transmara/meiguara/150 together with the 1st Defendant/Applicant.
 4. The present Application was served on the Petitioner (hereinafter referred to as "the Respondent") who filed a Replying Affidavit dated August 23, 2022 in opposition of the present application on the following grounds; -
 - i. The proposed amendment of the name William Leshon Nkeiyua To Wilson Lemashon Nkeiyua will introduce a stranger in the proceedings and therefore these proceedings as well as the orders consequential thereof will not be enforceable.
 - ii. The proposed amendment of the 1st Respondent's/Applicant's name is seeking to cure a fundamental defect which will greatly prejudice the Petitioner's case and result to a gross miscarriage of justice.
 - iii. The Respondent position is that this Petitioner emanates from an eviction order that was issued in Kilgoris Magistrates Court Elc No 14 Of 2018 between William Leshon Nkeyua & Another -versus- Paul Saningo Christopher.
 - iv. Consequently, the amendment of the William Leshon Nkeiyua To Wilson Lemashon Nkeiyua would be to introduce a stranger to the suit and these two names refer to two different persons.



- v. In addition to the above, the witness listed in this Petition is one William Leshon Nkeiyuawho provided the documents that would be relied upon at the hearing.
 - vi. The 2nd Respondent's prayer seeking to file further affidavits and/or documents is therefore unjustified as any further tendering of documents will prejudice the Respondent.
 - vii. The Respondent referred to Article 50 of the Constitution of Kenya, 2010 referring to the Right to a Fair hearing.
5. The Court upon going through the present application, the Replying Affidavit and the submissions by the Applicants and the Respondent, the issues for determination are rather straight forward as outlined below; -
- Issue Does The Name William Leshon Nkeiyua Refer To The Same Person Known As Wilson
No 1 Lemashon Nkeiyua?
- Issue Can The 2Nd Applicant Be Allowed To File Additional Documents And/or Affidavits In This
No 2 Petition?
6. Based on the above issues outlined hereinabove, this Court shall now proceed to discuss the same and make its determinations; -

Issue No.1- Which Is The Proper Name Between William Leshon Nkeiyua And Wilson Lemashon Nkeiyua Relating To The 1st Respondent?

- 7. The Applicants and the Respondent in this present Applicant seem to differ on the name of the 1st Applicant.
- 8. While the Respondent insists that the name William Leshon Nkeiyuais the correct one, the 1st Applicant submits that his proper name is Wilson Lemashon Nkeiyua.
- 9. The Respondent's further argument is that in another file known as Kilgoris Magistrate's Court Elc No 14 OF 2018, the 1st Applicant who is also the 1st Plaintiff in that suit participated and used the name William Leshon Nkeiyua and therefore the judgement and/or outcome therefore can only be enforced against William Leshon Nkeiyua and not Wilson Lemashon Nkeiyua.
- 10. Similarly, in this Petition, the 1st Respondent entered appearance as William Leshon Nkeiyua and the introduction of the name Wilson Lemashon Nkeiyua will introduce a stranger into this Petition.
- 11. On the other hand the 1st Applicant submits that his real and legal name is Wilson Lemashon Nkeiyua and not William Leshin Nkeiyua.
- 12. The 1st Applicant has produced his Kenyan Identification Card No 11346197 in the Supporting Affidavit to the present Applicant.
- 13. In addition to his Kenyan Identification Card, the 1st Applicant has also produced the Title Deed and Certificate of Official Search appertaining the property known as Transmara/meguara/150 which confirm the proper names appearing on the two documents to be Wilson Lemashon Nkeiyua and William Leshon Nkeiyua.
- 14. In determining this question, this Court would like to approach this issue by posing this question.
- 15. Who is the right person to participate in the Petition before this Court in view of the pleadings and documents filed herein?



16. According to the Petition filed on September 23, 2021 by the Respondent, the dispute emanates from two properties known as Transmara/meguara/44 in the name of Christopher Lekodi Kimurata and Transmara/meguara/150.
17. The copies of the Title Deed and the Certificate of Official Search dated May 13, 2021 confirm that the correct owners of Transmara/meguara/150 are Wilson Lemashon Nkeiyua & Solomon Lemaiyan Nkeiyua.
18. Order 1 Rule 10 (2) of the *Civil Procedure Rules, 2010* provides as follows; -

“The Court may at any stage of the proceedings , either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined , whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”
19. In other words, therefore, the proper parties and names to be used while adjudicating issues relating to the property known as Transmara/meguara/150 Should Be Wilson Lemashon Nkeiyua And Not William Leshon Nkeiyua.

Issue No 2- Can The 2Nd Applicant Be Allowed To File Additional Documents And/or Affidavits In This Petition?

20. The other substantive prayer in the present Application is whether or not the Court should grant leave for the 1st Applicant to file further documents and/or affidavits thereof.
21. The 1st Applicant submits that he is a joint owner of the property known as Transmara/meguara/150 and therefore wishes to ventilate pertinent issues which the Court should consider in making an informed decision and settle the matter conclusively.
22. The Respondent on the other hand states that the preparation of the hearing on this Petition was based on the documents and affidavits filed by the 2nd Applicant and therefore, it would be prejudicial to introduce new affidavits and/or documents at this stage.
23. According to the proceeding before the Court, the Respondent has prosecuted and closed his case on July 21, 2022.
24. The 2nd Applicant proceeded to testify on July 21, 2022 and closed his case.
25. Upon completion of the 2nd Applicant’s evidence, the Counsel representing the 1st and 2nd Applicant applied for an adjournment seeking to call the 1st Applicant to also testify.
26. The Application for adjournment was opposed by the Respondent on the basis that the 1st Applicant had not been among the persons listed as witnesses and had no filed any affidavit or documents that he would produce.
27. The Respondent submitted that the calling of the 1st Applicant would prejudice their case in totally keeping in mind they had already closed their case.
28. Due to this diverging view, the Court directed that a proper application be filed so that a determination would be made hence this present application.



29. The Court's point of departure in the determination of this question is what role the 1st Applicant plays in this Petition.
30. According to the pleadings, the 1st Applicant has actually been named and described as the 1st Respondent in this Petition by the Respondent.
31. The Memorandum of Appearance filed on September 27, 2021 by the firm of Maroko & Company, Associates confirm that the 1st Applicant is a substantive party in this Petition.
32. Similarly, the Response to the Petition filed on March 8, 2022 was done on behalf of both the 1st and 2nd Applicants herein.
33. Consequently therefore, the 1st Applicant herein is not just a witness but a substantive party in this Petition.
34. The 1st Applicant therefore has a right under Article 50 of the Constitution of Kenya, 2010 to be heard substantively before any judgement and/or decision can be pronounced as this will affect his ownership rights which are protected by virtue of Article 40 of the same Constitution of Kenya, 2010.
35. The 1st Applicant is not a mere witness of the 2nd Applicant, he is a co-owner of the disputed property known as Transmara/meguara/150.
36. The 1st Applicant has a right to ventilate and/or produce any documents and/or evidence that will help in determination of the substantive issues before the Court.
37. As to the aspect of prejudice, the Court is of the view that no prejudice will be suffered by the Respondent as the 1st Applicant's legal position on this Petition was contained in the Response to the Petition filed on March 8, 2022.
38. What the 1st Applicant now seeks to do is to give testimony or documentary evidence in line with the Response to the Petition filed on March 8, 2022.
39. The 1st Applicant's testimony and/or documentary evidence which he intends to produce in Court will be open to cross-examination by the Respondent.
40. Similarly, at the submission stage, the Respondent shall further have an opportunity to critic and/or make its substantive analysis of testimony and/or documentary evidence produced by the 1st Applicant.
41. It is therefore the Court's view that there is no prejudice that will be occasioned to the Respondent by the 1st Applicant testifying and/or producing the documents in support of its case at this stage.
42. In conclusion therefore, this Court makes the following Orders as appertains the Application dated July 27, 2022;-
 - A. The Court duly finds that the proper and correct name of the 1st Applicant is Wilson Lemashon Nkeiyua and not william leshon nkeiyua as relates to this Petition.
 - B. The 1st Respondent's particulars in all the pleadings in this Petition be and are hereby amended to read Wilson Lemashon Nkeiyua in place of William Leshon Nkeiyua.
 - C. The 1st Applicant who is also the 1st Respondent is granted leave of 21 days to prepare, file and serve any affidavits and/or documents it intends to rely upon at the hearing of his testimony.



- D. The Respondent and/or the Petitioner shall have a right to recall any witness if need be to clarify to answer to the 1st Respondent's testimony in the event a new issue is raised during the hearing thereof.
- E. Each party will bear its own costs of this Application.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 19TH DECEMBER 2022.

EMMANUEL M WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: MR NGENO

ADVOCATES FOR THE APPLICANT: N/A

ADVOCATES FOR THE RESPONDENTS: N/A

