



**Chelang'a & 3 others v Bundi & 4 others (Environment and Land Appeal  
E020 of 2020) [2025] KEELC 1276 (KLR) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1276 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND APPEAL E020 OF 2020**

**CK NZILI, J**

**MARCH 12, 2025**

**BETWEEN**

**SHEMIRA CHEPKEMEI CHELANG'A ..... 1<sup>ST</sup> APPELLANT  
RAHILA CHERUTO CHELANG'A ..... 2<sup>ND</sup> APPELLANT  
MOHAMED KIPKOSGEI CHELANG'A ..... 3<sup>RD</sup> APPELLANT  
IBRAHIM KIPKORIR CHELANG'A ..... 4<sup>TH</sup> APPELLANT**

**AND**

**JOHN ALPHONE BUNDI ..... 1<sup>ST</sup> RESPONDENT  
NICHOLUS ODUKO BUNDI ..... 2<sup>ND</sup> RESPONDENT  
JOHN MOGAKA BUNDI ..... 3<sup>RD</sup> RESPONDENT  
REBECCA BASIERI BUNDI ..... 4<sup>TH</sup> RESPONDENT  
NAUMI MORAA BUNDI ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. In an application dated 28/1/2025, the appellants are seeking to amend the memorandum of appeal dated 12/6/2023; the draft amended memorandum of appeal be deemed as duly filed and for costs.
2. The reasons contained on the face of the motion and in the affidavit sworn by Shamira Chepkemei on even date are that directions for the appeal have already been issued; hence the need to seek leave to amend, a key ground of appeal that would assist in determining the case was left out; the respondents shall not be prejudiced; the application was filed expeditiously and in the interest of justice.



3. The appellants also aver that in the impugned ruling, the trial court found the respondents entitled to the suit parcel by virtue of adverse possession, yet the court lacks jurisdiction on such matters. The memorandum of appeal and the draft memorandum of appeal were marked as annexures SCC “1 & 2”.
4. The respondents opposed the motion vide a replying affidavit sworn on 27/2/2025 by the 1<sup>st</sup> respondent, on his behalf and of other respondents. He avers that the application was filed one and a half years after the judgment was delivered; the appellants are guilty of laches; the respondents are being denied from enjoying the fruits of their judgment; the suit was initially filed as ELC (OS)No. 52 of 2019, and it is this the court which transferred it to the lower court.
5. Further, the respondents aver that at the time the matter was determined, the law on the jurisdiction of the Magistrates court to hear and determine matters on adverse possession had not been settled. That there existed case laws for and against magistrates handling such claims. He attached the authority to plead, and the court email notification on the transfer of the case to the lower court as annexures marked AR “1 & 2”.
6. For consideration is whether the appellants deserve leave to amend the memorandum of appeal. Order 42 Rule 3 of the Civil Procedure Rules provides as follows:
  - “(1) The appellant may amend his memorandum of appeal without leave at any time before the court gives directions under Rule 13.
  - (2) After the time limited by sub-rule (1), the court may, on application, permit the appellant to amend his memorandum of appeal.”
7. In *John Mugambi & Mugambi & Company Advocates -vs- Kiama Wangai* [2021] eKLR, the court citing with approval *George Gikubu Mbuthia -vs- Consolidated Bank of Kenya Ltd & Another* (2016) eKLR held that parties have a right to amend pleadings at any stage of the proceedings but before judgment, and which courts should generally allow. The court can, however, refuse to exercise its discretion to allow an amendment where a new or an inconsistent cause of action has been introduced, where it will adversely affect vested interests or accrued legal rights, and where prejudice or injustice cannot be compensated in costs is occasioned to the respondent. See also *Kenya Hotels Limited -vs- Oriental Commercial Bank Limited* [2018] eKLR.
8. Leave to amend pleadings equally extends to amendments at the appellate stage. It is at the court’s discretion that is to be exercised judiciously and not arbitrarily or whimsically. Looking at the draft amended memorandum of appeal, the appellants wish to introduce two grounds of appeal. In paragraphs 5 & 6, the appellants seek to impeach the jurisdiction of the trial court and that the trial court acted ultra vires. The grounds do not materially alter the appeal and cannot be ignored. The merits or demerits thereof are matters that shall be handled in the appeal.
9. Directions on the hearing of the appeal are yet to be issued. The respondents have not demonstrated how the new grounds of appeal and the delay in applying shall occasion prejudice. Matters regarding the jurisdiction of the court from which the appeal arose can be raised at any time and even at the appeal stage. Looking at the overall justice of this matter, it is only prudent to allow the application for amendment and allow parties to ventilate their issues during the hearing of the appeal. See *Adero & Another -vs- Ulinzi Sacco Society Limited* [2002] 1 KLR 577.
10. The judgment and the decree appealed against are not contained in the record of appeal. The lower court file is also yet to be availed. Be that as it may and for the foregoing reasons, the application, and the following orders shall issue;



- a. That the appellants be and are hereby granted leave to amend their memorandum of appeal in terms of the draft amended memorandum of appeal annexed to the motion.
- b. That the amended memorandum of appeal be filed and served upon the respondents within 7 days of this ruling.
- c. The lower court file shall be availed within 7 days hereof.
- d. The matter to be mentioned before the Deputy Registrar.
- e. That the costs of this motion will be costs in the appeal.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 12<sup>TH</sup> DAY OF MARCH 2025.**

In the presence of:

Court Assistant - Laban

1<sup>st</sup> respondent present

Mwangangi for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> Respondents

Kipngetich for Maritim for the Appellants present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

