



REPUBLIC OF KENYA



**KENYA LAW**

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**Kangethe v Nkirote (Environmental and Land Originating Summons  
E012 of 2022) [2025] KEELC 5123 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5123 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E012 OF 2022**

**BM EBOSO, J**

**JULY 3, 2025**

**BETWEEN**

**DANPHONE KAMUNA KANGETHE ..... PLAINTIFF**

**AND**

**JENIFFER NKIROTE ..... DEFENDANT**

**RULING**

1. What falls for determination in this ruling is the plaintiff's notice of motion dated 16/4/2025, through which he seeks leave to amend his originating summons as per the exhibited draft. He also seeks an order deeming as duly filed, the draft amended originating summons, upon payment of the requisite court fees.
2. The application is supported by the affidavit of the applicant's counsel, Jason Kiambi Mungania, sworn on 16/4/2025. The applicant's counsel deposed that, after filing this suit, he was informed by the applicant that the suit properties were subdivided and the resultant subdivisions were sold to various persons. He contended that it was necessary for the court to grant the plaintiff leave to amend the originating summons to join the new owners as defendants in the suit.
3. The applicant states that it is in the interest of justice that leave be granted to amend the originating summons to outline the issues for determination. He further states that in the absence of the amendments, the issues in dispute will remain unresolved, and the plaintiff will suffer prejudice.
4. The defendant/respondent opposed the application through her replying affidavit sworn on 9/5/2025. Her case is that the application is a waste of the court's time and an abuse of the court process and ought to be struck out. She contends that the application is meant to frustrate the finalization of the case.
5. The defendant further contends that the suit property, Abothuguchi/Makandune/786, was previously registered in the name of the defendant's father, one Mbiriti Ruthiri who died in 1984. The defendant adds that in 2019, the family of the late Ruthiri filed Githongo SPMC Succession Cause No.



33 of 2019, which was heard and determined. She further states that the suit property was distributed to the beneficiaries of the estate without any objection from the plaintiff, adding that the applicant filed Githongo E&L Case No. E005 of 2022 claiming that he had bought the suit land from the deceased in 1981 and was entitled to 2 acres out of the suit land. The said suit was struck out because it was time-barred.

6. The defendant contends that based on the applicant's evidence before this court, it is clear that the applicant is not in actual occupation and possession of the suit land, adding that the applicant vacated the suit land in 2005. The defendant adds that, the beneficiaries of the estate have had the suit land for 20 years now.
7. The defendant states that at the time the applicant was filing the instant suit, land parcel number Abothuguchi/Makandune/786 had already been subdivided and new numbers had been issued, adding that the applicant was aware of the new owners of the resultant subdivisions but chose not to sue them. She further states that upon serving the applicant with their trial bundle in 2022, the applicant still did not amend his pleadings. It is her case that it is only after the court directed the applicant to produce a current certified copy of the official search relating to the suit land that the applicant came up with an excuse that he wanted to amend his pleadings to include the registered owners.
8. The defendant contends that the applicant wishes to join the lawful beneficiaries of the deceased's estate who received their share vide the succession cause yet he never objected to the succession proceedings. She adds that the application does not disclose a cause of action against the beneficiaries. It is her case that the instant application is an afterthought meant to delay the determination of the case.
9. The Court has considered the application, the response to the application, and the parties' respective submissions. The Court has also considered the relevant legal frameworks and jurisprudence. Although the application was framed as a plea for leave to amend pleadings, in essence, it is a plea for joinder of five (5) additional defendants. The question that falls for determination in the application is, therefore, whether the application meets the criteria upon which this court exercises jurisdiction to grant leave for joinder and for amendment of pleadings. I will be brief in my analysis and disposal of the issue.
10. The law on amendment of pleadings is well settled. Order 8 rule 3 of the Civil Procedure Rules 2010 provides for amendment of pleadings with leave of the court as follows:
  - “(1) Subject to Order 1, rules 9 and 10, Order 24 rules 3,4,5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.”
11. Order 1 rule 10(2) of the Civil Procedure Rules provides the following framework on joinder:

“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 as 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.”



12. The Court of Appeal outlined the relevant principle on joinder in *Central Kenya Ltd v Trust Bank Ltd & 4 others*, Civil Appeal No. 222 of 1998 as follows:

“The jurisdiction of the court under O.1 rule 10 (2) and O.vi rule 3 (1) of the Civil Procedure Rules, respectively is specific. The decision as to who to sue is essentially that of the plaintiff, and the court’s duty thereafter, is to consider the allegations made against the named defendants and if it considers that there are other parties who should have been joined or were improperly joined, give appropriate directions under Order 1 rule 10 (2) above.

In Civil Appeal No 215 of 1996 aforementioned, this court made observations which suggested that some of the proposed defendants should have been made parties to facilitate the effectual, complete and just adjudication of the appellant’s suit. The Learned trial judge should have but did not take a cue from them and granted leave the appellant had sought in its application.”

13. In *JMK and MWM Misc Mombasa Civil Appeal No.15 of 2015*, the Court of Appeal reiterated the above principle as follows:

“Order 1 Rule (10) (2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or suo moto, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party.”

14. The Court of Appeal cited with approval the following excerpt from Sarkars’s Code of Civil Procedure (11th Ed Reprint 2011, Vol 1 P.887:

“This section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.”

15. The Court of Appeal outlined the relevant guiding principle on amendment of pleadings in the case of *Central Kenya Ltd Vs Trust Bank Ltd & 5 others* [2000] eKLR as follows;

“The policy of the law is that amendments to pleadings are to be freely allowed unless by allowing them the opposite side would be prejudiced or suffer injustice which cannot properly be compensated for in costs.”

16. The plea for leave to amend the originating summons and to join five additional defendants was brought after the plaintiff had given his sworn evidence-in-chief and had been cross-examined. It is clear that the plea was prompted by the plaintiff’s late realization that the title in respect of which he sought adverse possession orders had been subdivided and transferred to the five intended defendants.

17. The defendant is opposed to the plaintiff’s plea at this point principally because the plaintiff had reasonable opportunity to onboard the five defendants but failed to do so. Taking the above ground of opposition into account, and informed by the prevailing jurisprudence on joinder and amendment of pleadings, the court takes the view that the inconvenience which the proposed joinder is likely to occasion to the defendant can be indemnified through an award of reasonable costs.

18. Joinder of new defendants at this point will entail filing of additional pleadings, and most likely, a de-novo trial. For the above reasons, the costs to awarded to the defendant should take into account the



present application and the past preparation and past attendance at the past trial session. Taking the above factors into account, the court will assess the throw-away costs at Kshs. 45,000 to be paid to the defendant's advocates within 30 days.

19. In the end, the plaintiff's application dated 16/4/2025 is disposed in the following terms:
- a. The plaintiff is granted leave to amend the originating summons in terms of the exhibited draft originating summons and file and serve the amended originating summons within 10 days from today
  - b. The plaintiff shall, within 30 days from today, pay the defendant's advocates throw-away costs of Kshs. 45,000/= covering the application and the past trial preparation and trial attendance. In default, any amendment or joinder made pursuant to the above leave shall stand struck out and the application dated 16/4/2025 shall stand dismissed with costs.

**DATED, SIGNED AND DELIVERED AT MERU THIS 3RD DAY OF JULY, 2025.**

**B.M EBOSO [MR]**

**JUDGE**

In the presence of

Mr Mungania for the Plaintiff

Mrs Otieno for the Defendant

Court Assistant - Tupet

