



**Yoya v Ochieng & 2 others (Enviromental and Land Originating Summons  
46 of 2021) [2023] KEELC 21298 (KLR) (6 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21298 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 46 OF 2021  
GMA ONGONDO, J  
NOVEMBER 6, 2023**

**BETWEEN**

**DAVID OGINGA YOYA ..... PLAINTIFF**

**AND**

**ISHMAEL ODHIAMBO OCHIENG ..... 1<sup>ST</sup> DEFENDANT**

**KENNEDY OTIENO ODHIAMBO ..... 2<sup>ND</sup> DEFENDANT**

**SEVENTH DAY ADVENTIST CHURCH (EAST AFRICA)**

**LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion, application dated 13<sup>th</sup> October 2023 commenced pursuant to Article 159 of *the Constitution*, 2010, Sections 1A, 1B and 3A of the *Civil Procedure Act* 2010, the applicant/plaintiff through the firm of Veronica Migai and Company Advocates, is seeking the following orders;
  - a. That this Honourable Court be pleased to grant leave to the Plaintiff to file supplementary list of witnesses, witness statement and further list of documents.
  - b. That upon granting prayer 1, the Plaintiffs supplementary List of witnesses, witness statements and further list of documents
  - c. That the Honourable Court be pleased to strike out and or expunge from the Court's Record, Notice of change of Advocates, Plaintiffs further list of witnesses, further witness statements dated 22<sup>nd</sup>, day of September, 2023 and filed on 2<sup>nd</sup> October, 2023.
  - d. That costs of this application be provided for.



2. The application is premised upon the applicant's affidavit in support of it and grounds 1 to 7 stated on the face of the same. In summary, the applicant states that most of his witnesses have died and the remaining ones are aged and can barely attend court. Thus, substitution of the deceased witnesses would be necessary in the interest of justice.
3. The defendants have not responded to the application.
4. Moreover, Mr. Ongoso instructed by Mr. Bana learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants and Mr. Joab Olel a representative of the 3<sup>rd</sup> defendant/respondent, have no objection to the application.
5. In the premises, I find the application unchallenged and meritorious.
6. Accordingly, the application is hereby allowed in terms of orders 1, 2 and 3 sought therein and as stated in paragraph 1(a), (b) and (c) herein above.
7. Costs of the application be in the cause.
8. It is so ordered.

**DELIVERED, DATED AND SIGNED AT HOMA BAY THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**G.M.A ONG'ONDO**

**JUDGE**

