



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mibei v Soy (Environmental and Land Originating Summons  
E001 of 2023) [2025] KEELC 3869 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3869 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2023  
MN MWANYALE, J  
MAY 15, 2025**

**BETWEEN**

**JOHN KIPLANGAT MIBEI ..... APPELLANT**

**AND**

**KIPLANGANT ARAP SOY ..... RESPONDENT**

**RULING**

1. The Application dated 30.01.2025 subject of this Ruling seeks to: -
  - i. Amend the Originating summons as per the draft amended Originating summons.
  - ii. Deem the draft amended originating summons duly filed upon payment of requisite fees.
  - iii. Costs be in the cause.
2. The grounds in support of the application are *inter alia* that: -
  - a. The Applicants claim against is for an order of cancellation of the resultant titles L.R No. Transmara/Angata Barigoi/2006, Transmara/Angata Barigoi/2007, Transmara/Angata Barigoi/2008, L.R No. Transmara/Angata Barigoi/2009, L.R Transmara/Angata Barigoi/2010, L.R Transmara/Angata Barigoi/2011 formerly L.R No. Transmara/Barigoi/55 and restoration of the ownership of land to the former registered owner Kimibei Arap Maina which the Respondent illegally himself as the owner and later subdivided into seven (7) numbers i.e 2006 – 2011 and transferred to himself.
  - b. That interests of justice the court ought to allow this application.
3. The application is supported by the affidavit of John Kiplangat Mibei who reiterates the grounds in support of the application in his deposition and has annexed copies of the green cards for Angata/Barigoi 55, and its subdivisions 2006 – 2011 and prays for the application to be allowed.



4. A replying affidavit sworn by Johana Langat, was filed opposing the application, who deposed that
  - i) the plaintiff's original claim is based on adverse possession over Transmara/Angata Barigoi/55, and that the new claim over the subdivisions is baseless, the amendment is not a mere connection of an error but meant to send the court on a wild goose chase.
  - ii) That the Land Registrar's report indicate that the Applicant is not in occupation of the suit land and the Applicant's case has no merits.
5. On the basis of the above the Respondent sought for dismissal of the application.
6. The application was argued vide oral submissions.
7. Mr. Bii learned counsel for the Applicant submitted that while filing the O.S the Applicant was not aware that the suit property had been subdivided into 7 portions hence the Amendment is to bring to court the new numbers.
8. In response, Mr. Kiprotich for the Respondent submitted that at the time the O.S was filed, all the annexures to the Supporting affidavit to the application were in place, subdivision having taken place. Green cards opened on 23.07.2022 and initial O.S dated 07.07.2023; hence the subdivision were done before the O.S was filed. The court had directed a ground report to be filed which showed that the Respondent was in occupation of the suit parcel, hence there is no need to amend.
9. In a brief rejoinder, Mr. Bii placing reliance on 8 of the *Civil Procedure Rules*, submitted that Amendments could be done before Judgment. He also referred to Article 159 of the *Constitution*.

#### **Issues for Determination.**

10. The only issue arising for determination from the application upon consideration of the same and the law is whether or not the application is merited?

#### **Analysis and Determination**

11. The Respondent is right at the time of filing the O.S the property known as Transmara/Angata Barigoi/55 had ceased to exist upon its subdivisions to 7 new parcels; it follows that the Applicant ought then to have known of the non-existence of the suit parcel that he pleaded on.
12. The suit has not been heard and it is in fact yet to progress to pre-trial, and the Applicant seeks to amend so as to bring the new numbers before court.
13. In doing so, the Applicant will be bringing to the court the real matter in controversy.
14. Section 100 of the *Civil Procedure Act* empowers the court to allow Amendments that determine the real question or issue; and since the case has not been heard and the Respondent shall have a chance to respond and test the evidence at trial. It serves the interests of justice to allow the application so that the real issues can be determined. I thus find merit and allow the application. Costs shall be in the cause.

**DATED AT KILGORIS THIS 15<sup>TH</sup> DAY OF MAY, 2025.**

**HON. M.N MWANYALE**

**JUDGE**

In the presence of -

CA – Emmanuel/Sylvia



Mr. Bii for the Applicant

Mr. Kiprotich for the Respondent.

