



Wanyama & 2 others v Simiyu & 2 others (Environmental and Land Originating Summons E006 of 2024) [2025] KEELC 93 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEELC 93 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2024
EC CHERONO, J
JANUARY 23, 2025**

BETWEEN

**CALISTUS NYONGESA WANYAMA 1ST APPLICANT
CHARLES SIFUNA WANYAMA 2ND APPLICANT
PROYUS SIFUNA KHAEMBA 3RD APPLICANT**

AND

**ALFRED WANYONYI SIMIYU 1ST RESPONDENT
VINCENT SIKUU MULATI 2ND RESPONDENT
JOHN GROGAN MULATI 3RD RESPONDENT**

RULING

1. This ruling relates to the application dated 16/07/2024 which seeks the following orders;
 - a. That the Applicants be and are hereby granted leave to amend their originating summons, the draft amended originating summons hereto annexed be deemed to be duly filed and served subject to payment of the requisite court fees.
 - b. That the applicants be and are hereby granted leave to file a supplementary affidavit.
 - c. That costs of this application be provided for.
2. The application is premised on the grounds on the face of the application supported by the affidavit of Calistus Nyongesa Wanyama sworn on 16/07/2024. The Applicants aver that there is need to enjoin other parties who are crucial to this suit and file a supplementary affidavit to address further issues.
3. The Respondents filed a joint replying affidavit in response to the application dated on 14/07/2024. They stated that land parcel no. East Bukusu/South Kanduyi/1922 (herein referred to as 'the suit land')



is now in the names of the administrators of the estate of their late father Zacharia Mulati Simiyu who are Vincent Shikuku Mulati, Emmanuel Barasa Simiyu, Amos Wabwile Simiyu and Wycliffe Wanjala Simiyu. That the above administrators are the necessary parties and that the intended Respondents will only serve to delay the case.

4. I have considered the Notice of motion application dated 16/7/2024, the supporting of the Applicant and the replying affidavit. The Applicant herein is seeking to amend the Originating Summons dated 05/01/2024. In my view, the issues for determination at this stage are:
 - a. Whether the Applicant's Notice of Motion seeking orders for amendment has merit and ought to be entertained.
 - b. Who shall bear the costs of the application?
5. The law relating to amendment of pleadings is Order 8 of the *Civil Procedure Rules*.
6. The principles for consideration in an application for amendment of pleadings are set out in Court of Appeal decision of *Ochieng and Others Vs First National Bank of Chicago* Civil Appeal Number 147 of 1991. They are as follows:
 - a. the power of the court to allow amendments is intended to determine the true substantive merits of the case;
 - b. the amendments should be timeously applied for;
 - c. power to amend can be exercised by the court at any stage of the proceedings;
 - d. that as a general rule however late the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side;(emphasis is more)
 - e. the Plaintiff will not be allowed to reframe his case or his claim if by an amendment of the Plaintiff the Defendant would be deprived of his right to rely on limitations Act subject however to powers of the court to still allow an amendment notwithstanding the expiry of current period of limitation.
7. In the instant suit, the Applicant seeks to amend the Originating Summons to include individuals he perceives are necessary in the determination of this suit. This decision came after they conducted a search on the registered owners of the suit property. The Respondents on the other hand argue that the suit land is currently registered in the names of four individuals who are the administrators of the estate of Zacharia Mulati Simiyu and therefore it is not necessary to enjoin all the beneficiaries of the said estate.
8. However, this court notes that from the certificate of search attached by the Applicants herein, a confirmation of grant seems to have been issued and the suit land shared amongst the beneficiaries of the said estate. Contrary to the allegations by the Respondents, the suit land is no longer registered in the names of the administrators having been fully succeeded.
9. It is my considered view that in order for this court to arrive at a logical and just determination of the issues in controversy and taking into consideration the explanation offered by the applicant, I find that an amendment to include the proposed Respondents is necessary and will not prejudice the Respondents. In fact, the proposed amendment will give all the concerned parties an opportunity to present their claim and for the court to determine the issues before it to finality.
10. On the issue of costs, section 27 of the *Civil Procedure Act* provides that costs shall follow the event. The successful party shall ordinarily have costs.



11. Ultimately, I find that the application dated 16/07/2024 is merited and the same is hereby allowed in the following terms;
- a. The applicant is granted leave to amend the Originating Summons and file a supplementary affidavit.
 - b. The annexed amended originating summons to be filed within seven (7) from the date hereof.
 - c. Since the pleadings are now open, the Respondents are at liberty to file and serve their responses to the Amended Originating Summons and Supplementary affidavit appropriately in accordance with the law.
 - d. The new parties who have been joined as Respondents to be served with the Amended originating summons and thereafter Enter Appearance within 14 days from the date of service thereof.
 - e. The cost of this application to abide the outcome of the main suit.

12. Orders accordingly.

DATED SIGNED AND DELIVERED AT BUNGOMA THIS 23RD DAY OF JANUARY, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Juma Waswa for the Respondent
2. Applicant/Advocate-absent.
3. Bett C/A

