



Mochabo & another v Mititi & another (Environmental and Land Originating Summons E008 of 2023) [2025] KEELC 7231 (KLR) (23 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7231 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E008 OF 2023**

**M SILA, J
OCTOBER 23, 2025**

BETWEEN

ISAAC MOCHABO 1ST APPLICANT

PAUL KIANA 2ND APPLICANT

AND

CHARLES LWANGA MITITI 1ST RESPONDENT

WILLIAM SAGINI ORIBU 2ND RESPONDENT

RULING

1. The application before me is that dated 22 June 2025 filed by the applicants to this Originating Summons. They seek leave to amend the Originating Summons. The application is opposed.
2. To put matters into context, the applicants commenced this suit through an Originating Summons filed on 14 June 2021. They claimed to have acquired a portion of land measuring 88 feet by 40 feet by 88 feet by 40 feet out of the land parcel Wanjare/Bogiakumu/6245. They averred that from 1 December 2003 to 25 July 2013, the suit land was registered in name of Charles Lwanga Mititi, the 1st respondent, as Wanjare/Bogiakumu/2005. They pleaded that the 1st respondent later subdivided the land to bring forth the land parcels No. 6244 and 6245, and the latter parcel, which is the suit land was transferred to the 2nd respondent. The 2nd respondent filed a replying affidavit wherein he averred that he became the registered proprietor of the land parcel Wanjare/Bogiakumu/6245 on 2 August 2013. He otherwise denied the claim for adverse possession.
3. Directions were taken for the case to proceed by way of viva voce evidence and hearing commenced on 9 June 2005 when the applicants testified. At the hearing they were cross-examined at length on the existence of this land parcel No. 6245 and there was a mutation form put to them indicating change of this parcel No. 6245 to a parcel No. 9482.



4. In this application, the applicants aver that after filing suit, the 2nd respondent caused resurvey of the land so that it is titled as Wanjare/Bogiakumu/9482. They thus seeks to amend the Originating Summons so that their claim is to Wanjare/Bogiakumu/9482 instead of Wanjare/Bogiakumu/6245.
5. The 2nd respondent filed a replying affidavit to oppose the motion. He inter alia avers that the applicant has already testified and been cross-examined.
6. I have considered the application. It is one for amendment of pleadings. Order 8 Rule 5 of the [Civil Procedure Rules](#), provides for the general power to amend and Order 8 Rule 3 makes provision for amendment with leave. They are drawn as follows :

General power to amend [Order 8, rule 5.]

- (1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.
- (2) This rule shall not have effect in relation to a judgment or order.

Amendment of pleading with leave [Order 8, rule 3.]

- (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.
 - (2) Where an application to the court for leave to make an amendment such as is mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such subrule if it thinks just so to do.
 - (3) An amendment to correct the name of a party may be allowed under subrule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.
 - (4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under subrule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaint or counterclaim, he could have sued.
 - (5) An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief as already been claimed in the suit by the party applying for leave to make the amendment.
7. From the foregoing, particularly Order 8 Rule 3 (1) it will be seen that amendment may be sought and allowed at any stage of the proceedings. Of course, the court needs to be careful so that an amendment does not prejudice any party.



8. In this instance, the 2nd respondent contends that the suit is partly heard which is true. However, I do observe that what gave rise to the need to amend is the change in the description of the land after the suit had already been filed. When the applicant filed suit, the title was reading Wanjare/Bogiakumu/1645. In the course of the suit, the title was changed to Wanjare/Bogiakumu/9482. It would appear that the applicants were not aware of this change until they were cross-examined at the time that they testified. That change in the description of the title does not change the nature of the case; it still remains one for adverse possession for the same land in controversy.
9. In those circumstances, I am persuaded to exercise my discretion to allow amendment of the Originating Summons. I will direct the applicant to amend his pleadings within the next 7 days. There is also given leave to file any further list of documents and/or additional witness statements, the same to be filed together with the amended Originating Summons. The respondents are at liberty to file any reply to the amended Originating Summons in the usual manner within 7 days.
10. I will give further directions on how the suit should proceed after the amendments are made.
11. I make no orders as to costs.
12. Orders accordingly.

DATED AND DELIVERED THIS 23 DAY OF OCTOBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

1st respondent acting in person - present

Mr. Anyona for the 2nd respondent - present

Mr. Soire for the applicants – absent

Court Assistant – Michael Oyuko

