



REPUBLIC OF KENYA



**Kipchoge v Jemaiyo & 6 others (Environment and Land Case
E001 of 2025) [2025] KEELC 18458 (KLR) (15 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18458 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND CASE E001 OF 2025**

**L WAITHAKA, J
DECEMBER 15, 2025**

BETWEEN

CHARLES KIPROP KIPCHOGE PLAINTIFF

AND

CATHERINE JEROTICH JEMAIYO 1ST DEFENDANT

ISAIAH KIPTINGWOL CHEBOR 2ND DEFENDANT

MARY NJERI MACHABI 3RD DEFENDANT

EDWARD KIMANI SAGUI 4TH DEFENDANT

JOSPHAT MAIYO 5TH DEFENDANT

COUNTY SURVEYOR, ELGEYO MARAKWET 6TH DEFENDANT

**DIRECTOR OF LAND ADJUDICATION AND SETTLEMENT 7TH
DEFENDANT**

RULING

1. On 20th January, 2025 the plaintiff's counsel informed the court that his firm had inadvertently filed the wrong plaint and that after the error was discovered, they filed a fresh plaint which relates to the matter before court.
2. Counsel for the plaintiff prayed that the plaint filed on 3rd February 2025, dated 30th January 2025 be expunged from the court record and be replaced with the plaint dated 21st January, 2025.
3. Counsel for the defendants informed the court that they had filed a notice of preliminary objection dated 18th February 2025 challenging the manner in which the suit was initiated.



4. By a ruling delivered on 23rd September 2025, I found the defendant's preliminary objection lacking in merit and dismissed it.
5. Regarding the prayer by the plaintiff that the wrongly filed plaint be expunged from the court's record and be replaced with the plaint dated 21st January, 2025 I directed the parties to address me on the prayer before I can make a decision on it.

Plaintiff's submissions

6. Following that order/direction, the plaintiff filed submissions, dated 1st October 2025 in which he submits as follows: -

“...The fundamental duty of the court is to do justice to parties. ...the plaintiff failure to file a proper plaint is a candid and excusable mistake and that no prejudice will be suffered by the defendants should the plaint be admitted as duly filed. This is a proper case for the court to exercise its discretion to ensure that substantive justice is served upon parties.”
7. The plaintiff makes reference to Section 3A of the Civil Procedure Act and the case of Phillip Chemowolo & another v. Augustine Kubende (1982-88) 1 KAR 103 and submits that this court has inherent power to do justice to parties by admitting the plaint already on record and allowing the case to be heard on merit as none of the parties would be prejudiced if the application is allowed.
8. The plaintiff urges the court to take into account that with the advent of E-filing system, parties are bound to make mistakes as mostly it is about click and enter when filing.
9. Terming the error/mistake which occurred while filing the suit a procedural aspect which is curable, the plaintiff implores the court to take into account that hearing of the matter has not commenced and grant him the relief sought.
10. Despite having been given opportunity to address court on the application, the defendants did not file submissions within the time given and at all.

Analysis and determination

11. I have read and considered the explanation given by the plaintiff regarding the circumstances leading to filing of the wrong plaint. I have also taken into account that pleadings have not closed hence no prejudice incapable of being cured by award of costs is going to be occasioned on the defendants if the wrongly filed plaint is expunged from the court record and replaced with the right plaint.
12. The error/mistake that led to filing of the wrong plaint is a genuine mistake/blunder that ought not to be visited on the plaintiff. The mistake was discovered early enough and measures calculated at remedying it taken.
13. For the foregoing reasons, I allow the application by the plaintiff by expunging the wrongly filed plaint, dated 30th January, 2025 and substituting it with the plaint dated 21st January, 2025.
14. The plaintiff is directed to extract summons to enter appearance in respect of the regularized plaint and effect service thereof alongside the regularized plaint on the defendants within 7 days from the date of delivery of this ruling. The defendants shall have 15 days upon service to file their defence.
15. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT ITEN THIS 15TH DAY OF DECEMBER, 2025.



L. N. WAITHAKA

JUDGE

Ruling delivered virtually in the presence of;-

Mr. Oduor for the Plaintiff

Ms. Chelogoi for the 1-5th Defendants

N/A for the 6th and 7th Defendants

Court Assistant: Christine

