



**Cheruiyot v Siror (Environment and Land Case 117 of 2016)
[2026] KEELC 1312 (KLR) (4 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1312 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 117 OF 2016**

CK NZILI, J

MARCH 4, 2026

BETWEEN

JEREMIAH CHERUIYOT PLAINTIFF

AND

MICHAEL BETT SIROR DEFENDANT

RULING

1. The plaintiff, as the applicant, seeks to amend the plaint dated 28/7/2016, through an application dated 5/11/2025, to introduce a claim for approximately 36 acres comprised in L.R. No. 6614/6, Kitale, by virtue of adverse possession, and other consequent amendments as per the attached draft in the affidavit sworn on 5/11/2025 by Jeremiah Cheruiyot. He blames ill-health and old age for his inability to monitor the progress of his case with the former law firm.
2. Equally, the deponent blames the events of November 2023, of the defendant taking by force about 16 acres of his land, without a court order, legal process, or justification, as per photos annexed as JC-1(a), (b), (c), and (d), until the timely advice of his current lawyers.
3. The applicant deposes that he has now ably and competently been advised of the need to amend the plaint, to clarify the real issues in controversy for the just and conclusive resolution of the suit, which omissions or advice by the former law firm were inadvertent and not deliberate, and if not cured, will occasion him more prejudice than the defendant. The applicant also relies on a further affidavit sworn on 14/11/2025, alluding to a correct draft amended plaint, an annexure marked FJC-1.
4. The application is opposed through a replying affidavit of David K. Siror, sworn on 26/11/2025 for being filed after 9 years, as res judicata, after a similar application of 24/5/2019 whose ruling was delivered on 7/7/2022, as a repetition since the plaint dated 28/7/2016 and the reply dated 17/11/2017, have pleaded to the proposed issue, which were comprehensively replied to in the defence dated 30/8/2016, marked as annexures KS-3, 4, 5, 6, 7, 8, and 9 respectively.



5. The respondent deposes that the claim for adverse possession is not tenable in view of other previous suits between the parties, such as Nairobi HCC No. 2028 of 1988, and Kitale HCC No. 136/2000 (O.S), over the same land, and especially in the latter, where the plaintiff was the 2nd plaintiff whose judgment was entered. An eviction order was issued against him and others, and, in accordance with that order, the defendant proceeded to subdivide the land into 17 portions; therefore, this suit was filed after the plaintiff became aware of the subdivisions.
6. The respondent deposes that in 2017, following a complaint to the DCI, the plaintiff was found culpable for forgery and land fraud as per annexure marked KS-10, which led to the cancellation of the fake title deeds, area list, and index map as per annexure KS-11. The defendant deposes that the plaintiff was an active 2nd interested party in the matter and only reverted to this suit on 24/5/2019 with an application to amend the plaint.
7. The respondent deposes that the subject matter in this suit does not exist, after the 17 portions were created, as the mother title was surrendered to the lands office and the file register closed as per annexure KS-12-28, whereafter, the plaintiff became violent and assaulted him as per DCI investigations dated 12/5/2016 marked KS-29.
8. Further, the respondent deposes that after the ruling of 7/7/2022, which was compromised on 28/2/2024 as per annexure marked KS-33, where he was allowed to restrict himself to the 21 acres of land he is occupying. The respondent deposes that paragraphs 6, 7, 8, 9, 13, 14, 15, and 16 of the existing plaint relate to adverse possession and therefore the intended amendments will serve no purpose, more so when the mother tile does not exist as per annexure marked KS- 33 and 34.
9. The respondent deposes that in a Land Control Board meeting chaired by the County Commissioner, Trans Nzoia, on 7/8/2024, the issue covered other purchasers and not the plaintiff, who was entitled to the issuance of a land certificate, transfer instruments, and consents.
10. The respondent denies the alleged invasion, destruction of developments on L.R. No. 6614/6, and taking possession of the land occupied by the plaintiff, for his homestead is restricted to the 21 acres of land.
11. The respondent says that at his age of 93 years, he poses no threat to the plaintiff, the suit is an abuse of the court process, he will suffer great prejudice if the application is allowed, the applicant did not purchase the alleged 36 acres of land from him in 1976 or at any other time, the proposed amendments are unnecessary, the suit should be expeditiously heard, and that the plaintiff has a habit of changing legal representation, and that the last one ceased to represent him.
12. The applicant relies on written submissions dated 1/12/2025, isolating three issues for determination. It is submitted that the applicant has invoked the statutory and procedural foundation of this court to allow the amendments under Section 100 of the *Civil Procedure Act*, Order 8 Rule 3(1) and (5) of the Civil Procedure Rules. Reliance is placed on Mulla on the Code of Civil Procedure 18th/19th Edition Vol. 2 Commentary to Order V1 Rule 17, Central (K) Ltd -vs- Trust Bank Ltd [2000] EA 365, Easter Bakery -vs- Castelino [1958] EA 461, Elijah Kipngeno Arap Bii -vs- Kenya Commercial Bank Limited [2013] eKLR (2013) eKLR 345 and Joseph Ochieng -vs- First American Bank of Chicago [1995] eKLR.
13. The plaintiff submits that the prayers in the previous application that was declined by the court on 7/7/2022, had merely sought to add new parties, unlike the present one, seeking to add a new cause of action based on fresh facts of his notorious, uninterrupted, and continuous use of the land since 1994. Reliance is placed on Melesio Miheso -vs- Peter Luchangan [2021] eKLR.



14. Further, the plaintiff submits that the ruling of 7/7/2022 did not determine whether he should amend his claim and include one on adverse possession; hence, he is not barred from making this application. Reliance is placed on *Wambugu -vs- Njuguna* [1983] KLR 172, *Kasuve v Mwaani Investment Limited & 4 Others* [2004] eKLR, *Mtana Lewa -vs- Kahindi Ngala Mwagandi* [2015] eKLR.
15. The plaintiff submits that interlocutory comments are not final findings binding to a court, as held in *Uhuru Highway Development Ltd -vs- CBK* [1996] eKLR, and *DT Dobie Ltd -vs- Machina* [1982] KLR1. The plaintiff submits that an amendment to add a claim based on adverse possession is specifically permitted, as held in *Salat -vs- Independent Electoral and Boundaries Commission & 7 others* (Civil Appeal 228 of 2013) [2014] KECA 782 (KLR) (28 February 2014) (Judgment).
16. Further, it is submitted that reframing of the issues in a pleading is permitted as held in *Galaxy Paints Co. Ltd -vs- Falcon Guards Ltd* [2000] eKLR and in *Odd Jobs -vs- Mubia* [1970] EA 476. The plaintiff submits that the application is not *res judicata*, since no final determination was made for *res judicata* to apply, as held in *ET -vs- Attorney General* [2012] eKLR, *Accredo AG -vs- Stefano Uccelli* [2019] eKLR, and *Pop-in (K) Ltd -vs- Habib Bank AG Zurich* [1990] eKLR.
17. The plaintiff submits that subdivision of the mother title is void and does not defeat his intended claim on adverse possession, and that where it occurs during litigation, it cannot defeat his right which has accrued, as held in *Mawji -vs- USIU* [1976] KLR 185, *Naftali Ruthi Kinyua -vs- Patrick Thuita* [2015] eKLR, *Githu -vs- Ndeete* [1984] KLR 776, *Peter Thuo Kairagu -vs- Stephen Njenga* [2019] eKLR, and *Mbira -vs- Gachuhi* [2002] 1 EALR 137.
18. Further, the plaintiff submits that subdivisions intended to defeat litigation are void or voidable as held in *Gitway Investment Ltd -vs- Tajmal Ltd* [2006] eKLR, *Arthi Highway Developers Ltd -vs- West End Butchery Ltd* [2015] eKLR, and *Daudi Kiptugen -vs- Commissioner of Lands* [2015] eKLR.
19. The plaintiff submits that a party cannot benefit from his wrongdoing as held in *KACC -vs- Amuti* [2019] eKLR, and *John Harun Mwau -vs- Peter Gastrow* [2014] eKLR. The plaintiff submits that the court retains jurisdiction despite the subdivisions as held in *Nguruman Ltd -vs- Jan Bonde Nielsen* [2014] eKLR and *Macharia -vs- Kenya Commercial Bank Limited* [2012] eKLR.
20. The plaintiff submits that the intended amendments are necessary to align with the evidence, avoid multiplicity of suits, and that there will be no prejudice to the defendant. Reliance is placed on *Kivana Estates Ltd -vs- National Bank of Kenya* [2017] eKLR, *Central (K) Ltd -vs- Trust Bank* (supra), *National Bank of Kenya -vs- Pipe Plastic* [2001] KLR 112.
21. The plaintiff submits that the real issues are over 36 acres purchased in 1976, where he has been in possession, and the defendant's refusal to transfer despite the 1980 reconciliation at the Attorney General's Chambers, Land Control Board Consent, and the continued occupation and developments.
22. Having looked at the application and the response, the single issue for my determination is whether the proposed amendments are merited. Amendment of pleadings is governed by Order 8 Rule 5 of the Civil Procedure Rules. The principles to apply were discussed in *Coffee Board of Kenya -vs- Thika Coffee Mills Ltd & Others* [2014] KECA 409 [KLR]. The court held that:
 - a. Amendments that are necessary should be allowed for the determination of the real controversy in the suit.
 - b. The proposed amendments should not alter or be a substitute for the cause of action based on which the original list was raised.



- c. Inconsistent and contradictory allegations in negation of the admitted position of facts or mutually destructive allegations of facts wouldn't be allowed to be incorporated by means of amendments.
 - d. Proposed amendments should not cause prejudice to the other side that cannot be compensated by way of costs.
 - e. No amendment should be allowed that amounts to or results in defeating a legal right of the opposite party on account of lapse of time.
 - f. No party should suffer on account of technicalities of law, and an amendment should be allowed to minimize the litigation between the parties.
 - g. Delay in filing the application should properly be compensated for by costs.
 - h. An error or mistake that is not fraudulent should not be made a ground for rejecting the application for amendment to pleadings.
23. In *James Ochieng Oduol t/a Ochieng Oduol & Co. Advocates -vs- Richard Kuloba* [2005] eKLR, the court held that an amendment to result in a defeat of a defence of limitation should not be allowed unless there are peculiar circumstances. In *Kyalo -vs- Baysuf Brothers Ltd* [1982] eKLR, it was held that an application for amendments should be freely allowed if brought within a reasonable time, because to allow a late amendment would amount to an abuse of the court process.
 24. The person applying for an amendment must act in good faith. In *Halsbury's Law of England* 4th Edition Vol. 36(1) para 76, it is stated that an amendment will not be allowed and at a late stage if it is intended to advance a new ground of defence, is aimed at repairing an omission due to negligence or carelessness, and if it will cause an injustice or prejudice to the opposite party.
 25. In *Arap Bii -vs- KCB* (supra), the court said that the power to allow for an amendment is discretionary to be exercised rationally. In *Kassam -vs- Bank of Baroda (K) Ltd* [2003] eKLR, the court said that the power should be exercised liberally, unless there will be injustice or prejudice to the other side.
 26. In *Joseph Ochieng & Others -vs- National Bank of Chicago* (supra), the court said that the purpose of amendment mainly is to determine the substantive merits of the case, the proposed amendments should not be immaterial or useless or merely technical, if they will introduce a new case or new ground of defence, it can be allowed, unless it could change the action into one of a substantially different character, which could more conveniently be made subject to a fresh action, that an applicant will not be allowed to frame his case or claim if by the amendment the other party will be deprived of his right to rely on the *Limitation of Actions Act*.
 27. What the applicant seeks is to amend the plaint to introduce a claim based on adverse possession. The respondent terms the same as introducing inconsistent claims. In *Central Bank of Kenya Ltd -vs- Trust Bank Ltd* (supra), the court said that a party is allowed to make such amendments as may be necessary, for the determination of the real questions in controversy or to avoid multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued right is affected and that there will be no injustice to the other side.
 28. The respondent terms the proposed amendment as coming too late and immaterial, since the plaint already pleaded adverse possession, the application was brought in bad faith, lacks merits, is a delaying tactic, inconsistent with the plaint, and aimed at delaying the finalization of this matter. Further, the respondent says that the applicant had made a similar application; this one is res judicata and an abuse of the court process.



29. Reframing of an existing case or claim to deprive an opposite party of an accrued or vested interest or rights to rely on the *Limitation of Actions Act* can disallow a party from seeking to amend a pleading, as held in *Joseph Ochieng & Others -vs- Nation Bank of Chicago* (supra). Filing the application in bad faith or seeking to introduce immaterial, useless, or merely technical issues is another factor to consider. Trying to introduce a new cause of action, or alter the character of the initial plaint, is what the applicant is accused of by the respondent, more so after previous suits over adverse possession and the closure of the mother title.
30. The respondent pleads and submits that the substratum of the alleged title in the proposed amendments ceased to exist. Further, the respondent alleges that the applicant filed this suit after the previous one of adverse possession was determined and execution undertaken. The applicant, on one hand, alleges the purchase of the land and, at the same time, turns 360 degrees, to seek to plead adverse possession if allowed to make the amendments.
31. This is what the respondent terms as calculated to introduce a new case which would change the nature of the action into one of a substantially different character, at variance with the position hitherto pleaded by the parties.
32. In *Catherine Koriko & Others -vs- Evaline Rosa* [2020] eKLR, the court said that a claim for adverse possession is inconsistent with the claim of being a beneficiary of the estate of a deceased person. The court said that to allow the application for amendment of the defence was tantamount to an indirect attempt to re-open litigation over the suit property with a view to circumventing the substantive effect of and the rights of the parties already determined in the succession cause. The court said that a party cannot be allowed to amend pleadings in one case in order to reopen litigation between the same parties in another case.
33. A party that seeks to benefit from the discretion of the court has to approach the court in good faith and provide the court with all the reasons that have occasioned the failure to act with promptness. An applicant must be forthright to unlock the discretion of the court. In this application, the respondent states there has been a plethora of similar litigation, delays, lack of fortitude, and another application for amendment, which was rejected, making the instant one *res judicata*.
34. In the statement of claim, the plaintiff bases his claim on a sale agreement dated 1/3/1976 with the defendant. The procedure to file a suit on adverse possession is governed by Order 37 of the Civil Procedure Rules. In *Samuel Miki Waweru -vs- Jane Njeri* Civil Appeal No. 122 of 2001, the court said that a claim for adverse possession cannot succeed if the person asserting such a claim is in possession of the land as the owner or in pursuance of an agreement for sale or lease or otherwise.
35. In *Jandu -vs- Kilpal* [1975] EA 225, the court held that possession does not become adverse before the end of the period for which permission to occupy was given.
36. In *Githae -vs- Mwai & Others* Civil Appeal No. 230 of 2018 [2025] KECA 1563 [KLR] (3rd October 2025) (Judgment), the court cited *Mtana Lewa -vs- Kahindi Ngala* (supra) that for adverse possession to be established, the possession or occupation must be continuous, open, and without permission for at least 12 years.
37. In *Wambugu -vs- Njuguna* (supra), the court said that it is the dispossession of the proprietor that defeats the title with acts inconsistent with his enjoyment of the suit for which the true owner intended to use it, and the discontinuance of possession which defeats the title.
38. In *Kasuve -vs- Mwaani Investment Ltd* (supra), the court held that to prove adverse possession, exclusive possession must be proved without interruption after dispossessing the owner or by



- discontinuation of possession by the owner on his own volition. The respondent alleges that the applicant lives outside his land on 21 acres.
39. In *Andafu -vs- Akhulunya* Civil Appeal No. 70 of 2019 [2025] KECA 214 [KLR] (25th April 2025) (Judgment), the court said that one who enters or remains on land at the invitation of or with the permission of the title holder cannot subsequently claim adverse possession. The court cited *Gabriel Mbui -vs- Maranya* [1993] eKLR, that acts done under license or permitted by or with the leave of the owner do not amount to adverse possession, and that permissive occupation is inconsistent with adverse possession, unless, as held in *Wambugu -vs- Njuguna* (supra), there was evidence of revocation of the permission.
 40. The court said that the filing of the suit during the occupation amounted to an aggressive interruption as the owner was asserting ownership, though such an action in court, even though the respondent remained in the suit property.
 41. In *Richard Wefwafwa Songoi -vs- Ben Munifwa Songoi* [2020] eKLR, the court observed that pleas of title and a claim for adverse possession are mutually inconsistent and exclusive. In *Mohan Lal -vs- Mirza Abdul Gaffar* [1996] 1SCC 639, faced with an inconsistent claim of title and adverse possession, the Supreme Court of India stated that since the applicant had admitted that he came into possession of land lawfully under an agreement and continued to remain in possession until the date of the suit, the plea of adverse possession was not available to him. The court said that, having come into possession through an agreement, he must disclaim his right thereunder and prove assertion of his independent, hostile adverse possession.
 42. In *Haro Yonda Juaje -vs- Sadaka Dzenzo Mbauro & Another* (2014) eKLR and *Catherine Koriko & 3 others -vs- Evaline Rosa* (2020) eKLR, the court said that one cannot succeed in a claim of adverse possession before conceding that the registered proprietor of the land is the true owner.
 43. In this application, the applicant seeks to introduce a claim on adverse possession, which is said to be inconsistent with his previous plaint and amounting to a new cause of action or substantially altering the suit.
 44. Looking at the pleadings on record, the applicant cannot have it both ways. On one hand, he is saying that the title held by the respondent was fraudulently acquired and then still claims the same parcel of land under the doctrine of adverse possession. If that be so, his cause of action would be for rectification of title by cancellation under Section 80 of the [Land Registration Act](#) and not adverse possession.
 45. In *Mwalimu & Others -vs- Halal & Another* [2025] KECA 1166 [KLR], the court said that a person cannot claim adverse possession while simultaneously disputing the validity of the registered owner's title. The two causes of action are mutually exclusive and cannot coexist in the same cause. An issue has been raised by the respondent that the land has changed particulars and that the applicant cannot, in law, bring a suit based on adverse possession.
 46. An adverse possessor acquires what is called overriding interests to which a new registered owner or purchaser's title is subject, if he is still in possession when the title changes. In *Titus Kigoro Munyi -vs- Peter Mburu Kimani* [2015] eKLR, the court observed that under Section 7 of the [Limitation of Actions Act](#), the law relating to prescription affects not only the present holders of the title but their predecessors.
 47. Another issue raised is whether the applicant can introduce a claim for adverse possession through an amended plaint. This question was addressed by the Court of Appeal in *Chevron (K) Ltd -vs- Harrison Charo Wa Shutu* [2016] eKLR and *Gulam Mariam Noordin -vs- Julius Charo Karisa* Civil Appeal No. 26 of 2015. The court said that where a party is sued for vacant possession, they can raise a defence



by statute of limitation by filing a defence or a defence and counterclaim. The court said that it's only when a party applies to be registered as proprietor of land by adverse possession that Order 37 Rule 7 requires such a claim to be brought by an originating summons. See also Emily Chepkor Chepkwony -vs- Paul Arap Chandock [2021] eKLR.

48. In Joseph Tireiti -vs- Jacob Kipsugot Arap Lagate & another [2013] eKLR, Munyao S. J, as he then was, declined to allow an amendment to bring in a new cause of action for adverse possession. The court said that the effect of such an amendment would ordinarily prejudice the other party, as they would now be forced to face litigation that was completely different from what they had been defending. The court said that the danger is that if such amendments are liberally granted, then a litigant would wait till the end of the suit to attempt to fill in the holes created by the other party during the conduct of litigation.
49. In Rubina Ahmed & Others -vs- Guardian Bank Ltd [2019] eKLR, the Court of Appeal declined to interfere with the trial court, for it was simply balancing the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it.
50. Looking at the totality of the circumstances of this application, the history of the matter, the manner in which the applicant has conducted himself, his past pleadings and affidavit filed in the course of interlocutory pleadings, the way he has changed legal representation, it cannot be true that the applicant's former law firms misled or committed mistakes and did not see or address his alleged new cause of action and seek for amendments to his plaint.
51. Looking at the supplementary affidavit, the applicant has deliberately avoided addressing the factors which the respondent has pleaded on oath militating against leave to amend, the injustice, prejudice, mischief, and the deprivation of accrued rights or defences.
52. Written submissions are not and cannot amount to evidence or pleadings as held in D.T. Moi -vs- Mwangi Stephen Muriithi & Another [2014] eKLR. As much as the applicant is very eloquent and provides a reasoned elucidation of the law, unfortunately, the facts as pleaded in the application, the supporting, and further affidavits do not align with the law on pleadings, especially to bring on board an inconsistent cause of action.
53. The upshot is that I find the application lacking merit. It is dismissed with costs.
54. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 4TH DAY OF MARCH 2026.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant – Dennis

Wangila for the plaintiff/applicant present

Momanyi for defendant/respondent absent

Waweru for Katwa present

