



**Kombo & another v Mbuvi (Land Originating Summons
E002 of 2025) [2026] KEELC 2275 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2275 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
LAND ORIGINATING SUMMONS E002 OF 2025**

EO OBAGA, J

APRIL 23, 2026

BETWEEN

GIBSON NDUME KOMBO 1ST APPLICANT

KIMWELE KOMBO 2ND APPLICANT

AND

KIMUYA MBUVI RESPONDENT

RULING

1. Before this court for determination is the Notice of Motion dated 10th November, 2025 wherein the following orders were sought by the 2nd Applicants: -
 1. [Spent]
 2. That leave be granted to the Applicants to amend the Originating Summons dated 25th February, 2025.
 3. That the amended draft Originating Summons amended on 10th November, 2025 together with the supporting affidavit and annexures be and are hereby deemed to be duly filed and served.
 4. That the Respondent be at liberty to amend their Replying affidavit dated 4th June, 2025 and/or reply to the instant application upon service.
 5. That the costs of this application be in the cause.
2. The application is premised on the grounds appearing on its face in addition to the joint supporting affidavit of Gibson Ndume Kombo and Kimwele Kombo sworn on even date. The deponents averred that they filed the originating summons herein dated 25th February 2025 seeking inter alia orders of adverse possession against the Respondent. It was further averred that the Applicants' advocates had



realized a mistake in the prayers sought and that an amendment is necessary in guiding the court in determination of the suit.

3. The deponents contended that the proposed amendments do not bring forth new causes of action but rather seek to regularize the suit appropriately. It was further contended that the amendments sought will not prejudice the Respondent and that the application has been brought in good faith. They added that the amendments will not affect the legal rights of the parties nor cause injustice to the Respondent. A draft amended originating summons was annexed to the supporting affidavit.
4. The Respondent did not file a reply to the instant application. Instead, he elected to rely on his replying affidavit sworn on 4th June, 2025 in reply to the originating summons.
5. The sole issue for determination is whether the Applicants ought to be granted leave to amend their originating summons dated 25th February, 2025.
6. Amendment of pleadings is a discretionary power vested with the court. Section 100 of the Civil Procedure Act outlines as follows: -

‘The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.’

7. Order 8 Rule 3(1) of the Civil Procedure Rules sets out as follows: -

‘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.’

8. The principles that govern the exercise of such discretion were elucidated by the Court of Appeal in *Central Kenya Ltd v Trust Bank Ltd* [2000] 2 EA 365 (CAK) where it was observed as follows:-

“The amendment of pleadings and joinder of parties was aimed at allowing a litigant to plead the whole of the claim he was entitled to make in respect of his cause of action. A party would be allowed to make such amendments of pleadings as were necessary for determining the real issue in controversy or avoiding a multiplicity of suits provided

- (i) there had been no undue delay,
- (ii) no new or inconsistent cause of action was introduced,
- (iii) no vested interest or accrued legal right was affected, and
- (iv) the amendment could be allowed without injustice to the other side.

Accordingly, all amendments should be freely allowed at any stage of the proceedings, provided that the amendment or joinder did not result in prejudice or injustice to the other party that could not be properly compensated for in costs; *Beoco Ltd v Alfa Laval Co Ltd* [1994] 4 All ER 464 adopted.”



9. In the case of *Institute for Social Accountability & Another v Parliament Of Kenya & 3 others* [2014] eKLR, the Court aptly held as follows: -

“ 17. The issue of amendment of pleadings is not novel and has been the subject of numerous court decisions, the common denominator being that as a general principle, courts will normally allow amendment of pleadings at any stage of the proceedings if it can be done without occasioning injustice or prejudice to the other party and which prejudice can be compensated by an award of costs. See generally *Eastern Bakery v Castelino* (1958) EA 461; *Ochieng and Others v First National Bank Of Chicago* CA Civil Appeal Number 149 of 1991, *Kenyatta National Hospital v Kenya Commercial Bank Ltd & Another* [2003] 2 EA.

18. The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of the facts already pleaded or the relief or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings.

19. Rule 18 of the Rules clearly stipulates that the court may permit an amendment at any stage of the proceedings. The court will normally allow parties to make such amendments as may be necessary for determining the real questions in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, no new or inconsistent cause of action is introduced, and no vested interest or accrued legal right is affected and that the amendment can be allowed without an injustice to the other side.”

10. Having perused the proposed amendments in the annexed draft originating summons, it is clear that the Applicants wish to add a fresh prayer seeking to empower the Land Registrar Makueni to effect registration of the suit property in their favour. To my understanding, the amendment will enable the Applicants to fully articulate their claim and prayers to this court.

11. No evidence has been adduced to demonstrate that the proposed amendments will prejudice the Respondent’s case in any manner. In the end, the court will be assisted in effectively determining the real matters in controversy if the amendment sought is granted.

12. To buttress the above position, the Court in *Muleya v Common Market for Eastern and Southern Africa and another* [2003] 1 EA 173 (COMESA) held as follows: -

“ In light of all the above, the conclusion is inescapable that the rule to be followed by the court is that an amendment to a party’s pleadings will be allowed if the amendment seeks only to amplify, elaborate, particularize or elucidate on a matter that is already contained in the pleading that is sought to be amended. Conversely, an amendment that seeks to introduce a brand new matter altogether (such as a new cause of action, or a new relief), is to be denied.”

13. In the end, the instant application is merited. The Applicant shall file and serve an amended originating summons within 14 days. The Respondent is at liberty to file an amended reply to the amended originating summons within 14 days of being served. Costs shall be in the cause.



It is so ordered.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 23RD DAY OF
APRIL, 2026.**

In the Presence of:

Mr. Makau for Applicant.

Court assistants Steve and Nyaaga.

