

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
BUNGOMA
ELC LAND CASE NO. E010 OF 2023

PATRICK MUSUNGU LIHANDA 1ST

PLAINTIFF

NEBERT MISIGO MUDAKI 2ND

PLAINTIFF

VERSUS

REV. ELKANA SALAMBA AYIGA 1ST

DEFENDANT

REV. JAMES ONDIEK OGENDI 2ND

DEFENDANT

REV. ZEDEKIAH MATATA ODERA 3RD

DEFENDANT

REV. RUTH WERUNGA 4TH

DEFENDANT

NATIONAL LAND COMMISSION 5TH

DEFENDANT

CHIEF LAND REGISTRAR 6TH

DEFENDANT

LAND REGISTRAR, BUNGOMA 7TH

DEFENDANT

THE ATTORNEY GENERAL 8TH
DEFENDANT

RULING

The 4th Defendant filed the application dated 22/7/2025 seeking to have the amended plaint dated 1/7/2025 struck out for contravening the orders made in the ruling delivered on 19/6/2025. The application was made on the grounds that the Honourable Court granted the Plaintiffs leave to amend their plaint in accordance with the draft amended plaint within 7 days. The 4th Defendant contended that the amended plaint dated 1/7/2025 contravened the court orders in that firstly, the 1st Plaintiff Patrick Musungu Lihanda was substituted by Kenneth Mbalanga Adiara contrary to the orders made by the court and secondly, that the amended plaint was filed outside the timelines given by the court.

Reverend Ruth Werunga swore the affidavit in support of the application. She deponed that on 9/7/2025, the Plaintiff filed an amended plaint that was different from the in which they substituted a party. She emphasized that court timelines must be complied with for the expeditious disposal of disputes and added that the Defendants would suffer prejudice because a new party had been brought into the suit without the leave of the court.

Karani O. Aggrey swore the replying affidavit in which he conceded that on 19/6/2025, the court directed the Plaintiff to file

its amended plaint within 7 days. He deponed that the Plaintiff filed its amended plaint barely 20 days from the date of the ruling while explaining that the delay in filing the amended plaint was occasioned by challenges in getting hold of Nebert Misigo Mudaki. Further, he clarified that Rev. Kenneth Mbalanya Adiara was the current General Superintendent of the Pentecostal Assemblies of God, Kenya having taken over from Rev. Patrick Musungu Likhanda. He maintained that the amendments did not affect the cause of action and will not cause any prejudice to the 4th Defendant. Further, that the orders sought by the 4th Defendant were draconian and would result in an injustice.

The application was canvassed through written submissions. The 4th Defendant submitted that Order 1 Rule 10 of the Civil Procedure Rules gave the court power to add or substitute a party and that substituting a party required leave of the court. She urged that upon the lapse of the 7 days within which the Plaintiff was to amend its plaint, it was incumbent upon the Plaintiff to move the court for extension of time, which it failed to do. The 4th Defendant added that a document filed outside the time allowed for filing it was a nullity.

The Plaintiff submitted that Nebert Misigo Mudaki resided in Vihiga and that the delay arose when the documents were sent to him for execution. The Plaintiff submitted that the electronic court filing system was experiencing a system downtime on 11/7/2025, which was beyond the control of the Plaintiff. The Plaintiff maintained that the 4th Defendant had not demonstrated the

prejudice she stood to suffer if the amendments were allowed and deemed to be properly on record.

The Plaintiff submitted that it was granted leave to amend the plaint and that the essence of amendment was to bring out the issues in controversy, which include relevant parties not sued at the time the suit was filed. It added that the substitution and introduction of Rev. Kenneth Mbalanya Adiara was done in good faith while arguing that he was not introduced as a new party. The Plaintiff cited Article 159 of the Constitution, which requires that matters be determined without undue regard to technicalities.

The issue for determination is whether the court should strike out the amended plaint as sought by the 4th Defendant. A perusal of the ruling of 19/6/2025 shows that the Plaintiff was granted leave to amend and serve the plaint in terms of the draft annexed to the supporting affidavit sworn by Rev. Kenneth M. Adiara within 7 days of the date of that ruling. It is not in contention that the amended plaint was filed outside the timelines given by the court and that the introduction of Rev. Kenneth Mbalanya Adiara as the 1st Plaintiff was not contemplated in the amendments allowed by the court.

It was necessary for the Plaintiff to seek the court's leave to substitute Rev. Kenneth Mbalanya Adiara as a party in the suit.

The court allows the application dated 22/7/2025.

Delivered virtually at Bungoma this 28th day of April 2026.

**K. BOR
JUDGE**

In the presence of: -

Mr. Omundi Bw'Onchiri for the 4th Defendant

Court Assistants- Bett/Metrine

No appearance for the other parties

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