



**Oreng & another v Ouma (Sued as the legal representative of Pitalis Ogola Ombewa) & 2 others  
(Environment & Land Case 42 of 2021) [2024] KEELC 782 (KLR) (19 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 782 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY  
ENVIRONMENT & LAND CASE 42 OF 2021  
GMA ONGONDO, J  
FEBRUARY 19, 2024**

**BETWEEN**

**JOSHUA AGUTU ORENG ..... 1<sup>ST</sup> PLAINTIFF**

**RUSALINA AGEKE NYAPARA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**PHILGONA AJWANG OUMA (SUED AS THE LEGAL REPRESENTATIVE OF  
PITALIS OGOLA OMBEWA) ..... 1<sup>ST</sup> DEFENDANT**

**SAMSON OGOLA OMBEWA ..... 2<sup>ND</sup> DEFENDANT**

**SAKARIA OKETCH OUMA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The ruling is in regard to an application by way of a Notice of motion dated 2nd November 2023 generated under, inter alia, Order 8 Rule 3 (1) of *Civil Procedure Rules*, 2010 by the plaintiffs/applicants through G.S Okoth and Company Advocates for the orders infra;
  - a. Spent
  - b. That the Honourable Court be pleased to allow the plaintiffs to amend the originating summons dated 8<sup>th</sup> day of November 2016 and substitute the same with an amended plaint as per the draft plaint annexed the application.
  - c. That the costs of this application be costs in the cause.
2. The application is rooted in the 1st plaintiff/applicant's affidavit of seven paragraphs sworn on even date together with a copy of originating summons and a copy of amended plaint marked as "JAO-1" and "JAO-2" respectively annexed thereto alongside the following grounds;



- a. The suit was commenced by originating summons on the understanding that the nature of the claim involved adverse possession.
  - b. On further instructions and scrutiny of the facts a case of acquisition by the adverse possession does not arise in the prevailing circumstances thus necessitating an amendment.
  - c. The case has not been heard inter-partes and no prejudice shall be suffered by the respondents by reason of the amendment.
  - d. The amendment is made for the purpose of determining the real question in controversy between the parties.
3. Miss Agade instructed by M/S Odondi Awino and Company Advocates for the defendants/respondents, has no objection to the application subject to costs thereof.
  4. Miss P. Odhiambo instructed by M/S G.S Okoth and Company Advocates has offered costs of Kshs 3,000/= to the respondents.
  5. The application is not opposed save for costs which follow the event and within the discretion of the court; see the proviso to section 27 (1) of the Civil Procedure Act Chapter 21 Laws of Kenya and decision in Jasbir Singh Rai-vs-Tarlochan Singh Rai (2014) eKLR.
  6. Furthermore, I am guided by Articles 159 (2) (b) of the Constitution of Kenya, 2010, sections 3 and 19 of the Environment and Land Court Act, 2015 (2011) and section 3 and 3A of the Civil Procedure Act (supra) on administration of justice without delay.
  7. In the result, the application is meritorious. The same is hereby allowed in terms of order No. 2 sought therein. The amended pleading be filed and served within the next 14 days from this date.
  8. The plaintiffs/applicants to bear costs of the application in the sum of Kshs 4,000/= payable within the next 14 days from this date.
  9. It is so ordered.

**DATED AND DELIVERED AT HOMA BAY THIS 19<sup>TH</sup> DAY OF FEBRUARY 2024.**

**G.M.A ONG'ONDO**

**JUDGE**

Present;

- a. P. Odhiambo instructed by G.S Okoth and Company Advocates for the Plaintiffs/Applicants
- b. Miss Agade instructed by Odondi Awino and Company Advocates for the Defendants/Respondents
- c. Luanga, court assistant

