

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KERICHO

CIVIL SUIT NO. 19 OF 2014

ANDREW KIPLANGAT BII.....PLAINTIFF

VERSUS

CHARLES KIPKURUI KOECH..... DEFENDANT

RULING

(Application to amend Originating Summons; application not opposed; application allowed)

This suit was commenced by way of an Originating Summons filed on 14th April 2014 taken out pursuant to the provisions of **Order 37 Rules 3, 14, and 15** of the **Civil Procedure Act**. In the Originating Summons, it is averred that the applicant has acquired title to 0.35 acres of the **land parcel Kericho/Kiptere/3873** and should be registered as proprietor thereof.

Through an application dated 14th July 2015, the applicant wishes to amend the Originating Summons. I have perused the draft amended Originating Summons and I have seen that what the applicant wishes to do, is to add a question as to whether he is entitled to ownership of the 0.35 acres of the suit property by way of adverse possession. The application is not opposed by the respondent.

On my part I have no problem with allowing the applicant to amend his pleadings. I only need to point out two issues that I have observed in the draft amended Originating Summons. First, there is no change in the title of the Originating Summons. If the applicant is relying on **Order 37 Rule 7**, which is what provides for the procedure for a claim for adverse possession, then he needs to amend his heading to also add **Order 37 Rule 7**. Secondly, the draft amended Originating Summons has two dates. It can only have one date, and the other, the date of amendment. The applicant needs to take care of these while amending the Originating Summons.

The application to amend is otherwise allowed and I direct the Amended Originating Summons supported by an appropriate affidavit to be filed and served within the next 14 days. The respondent is at liberty to file a Replying Affidavit to the Amended Originating Summons in the usual manner. The applicant will however shoulder the costs of this application.

It is so ordered.

Dated, Signed and delivered on this 24th day of July, 2015

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

PRESENT

Ms Chelangat Advocate instructed by M/s J.K. Kirui & Company Advocates for Applicant

Ms Chepkurui instructed by M/s Chepkurui Koech & Company Advocates for Respondent

Court Assistant; Mr. Kenei