



REPUBLIC OF KENYA



KENYA LAW
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**Wanyama v Lyani & another (Civil Application 163 of 2020)
[2025] KECA 715 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KECA 715 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION 163 OF 2020
HA OMONDI, JA
APRIL 25, 2025**

BETWEEN

JOSEPH MUMERO WANYAMA APPLICANT

AND

JAFRED WANJALA LYANI 1ST RESPONDENT

HESBORN MURULE LUSWETI 2ND RESPONDENT

*(Being an application from the Environment and Land Court at Bungoma
(Boaz N. Olao, J.) dated 11th December 2019 in Case No. 26 of 2011)*

RULING

1. The applicant had filed suit by way of an Originating Summons claiming adverse possession over land parcel Ndivisi/Ndivisi/ 1640 and that the respondent's title had been extinguished by operation of the law. The suit was heard and dismissed; the applicant aggrieved by the outcome has appealed to this Court by way of a memorandum of appeal dated 16th November 2020.
2. The applicant realises that there is an omission in the memorandum of appeal in terms of the prayers sought; and which if not amended would render the appeal incapable of execution, in the event that it succeeds. The application is supported by the affidavit dated 4th March 2025, sworn by Joseph Mumero Wanyama, indicating that what is sought to be included in the prayers is that the appeal be allowed in terms of the Originating Summons that had been filed.
3. The respondents' advocate was duly served by the Court as demonstrated by the hearing notice dated 1st March, 2025. The respondents neither filed a replying affidavit nor written submissions in opposition to the application thereof. The application is thus unopposed.



4. I have perused the memorandum of appeal and find that indeed without the said prayer being included, it renders the appeal, if successful, amorphous. In any event no prejudice will be occasioned to the respondent.
5. Consequently, leave to amend the memorandum of appeal be and is hereby granted. The draft amended memorandum of appeal dated March 4, 2025 be and is deemed as duly filed. The same shall be served on the respondents within 2 days from the date of this ruling. There shall be no orders as to costs.

DATED AND DELIVERED AT KISUMU THIS 25TH DAY OF APRIL, 2025.

H. A. OMONDI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

