



**Gisiri v Ngera (Environmental and Land Originating Summons
128 of 2018) [2024] KEELC 14215 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 14215 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 128 OF 2018
GMA ONGONDO, J
SEPTEMBER 25, 2024**

BETWEEN

JULIUS MASIA GISIRI APPLICANT

AND

JUSTUS RIOBA NGERA RESPONDENT

RULING

1. The instant ruling is in respect of an application by way of a Notice of Motion dated 15th January 2024 pursuant to section 3A of the *Civil Procedure Act* Chapter 21 Laws of Kenya, Order 8 Rule 3 of the *Civil Procedure Rules* 2010 and Order 1 Rule 10 of the same Rules. The defendant/applicant, Julius Rioba Ngera through Abisai and Company Advocates is seeking the following orders;
 - a. That the applicant/Defendant be granted leave to amend application dated 17th November October 2023.
 - b. That the amended application be deemed duly filed upon payment of the court fees.
 - c. That the costs be in the cause.
2. The application is founded upon the applicant's supporting affidavit of fourteen paragraphs sworn on even date and grounds (a) to (h) stated on the face of the same. Briefly, the applicant in person filed the application dated 17th October 2023 on even date and thereafter appointed Abisai and Company Advocates to act on his behalf. That upon perusal of the application, it was discovered that the applicant left out many pertinent issues therein hence imperative to amend the application which is brought without inordinate delay to determine the said issues in the interest of justice.
3. The plaintiff/respondent, Julius Masia Gisiri through Mudeyi Okumu and Company Advocates filed grounds of opposition dated 28th November 2023 to the application dated 17th October 2023. The



grounds include; that the applicant has not annexed any copy of the Notice of Appeal to the said application.

4. In that regard, is the application meritorious?
5. It must be borne in mind that the applicant/defendant in person lodged a Notice of Appeal stamped on 17th October 2024 in this matter.
6. By the said notice, an appeal is deemed duly filed herein in line with Order 42 Rule 6 (4) of the Civil Procedure Rules 2010.
7. Order 8 Rule 5 of the Civil Procedure Rules 2010 gives the court discretion to order amendment of any document for purposes of determining the real questions in controversy between the parties or correct any defect; see also section 3A (Supra) on the saving inherent powers of the court to meet the ends of justice.
8. The applicant has the rights of access to justice and fair hearing of the application under Articles 48 and 50 (1) of *the Constitution* of Kenya 2010.
9. To this end, I find the application cogent and meritorious.
10. Thus, the application is hereby allowed in terms of amendment sought therein as set out in paragraph 1 (a) (b) and (c) hereinabove.
11. It is so ordered.

DATED AND DELIVERED AT MIGORI THIS 25TH DAY SEPTEMBER 2024

G M A ONGONDO

JUDGE

present;

Mr B. Singei learned counsel for the applicant

Mr. Momanyi instructed by Mudeyi Okumu learned counsel for the respondent

Tom Maurice, court assistant

