



Siteya (Suing as the Legal Representative of the Estate of Suakei Ole Siteya Korongolo) v Olute & 8 others (Environment & Land Case 116 of 2018) [2023] KEELC 20324 (KLR) (28 September 2023) (Ruling)

Neutral citation: [2023] KEELC 20324 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 116 OF 2018
LC KOMINGOI, J
SEPTEMBER 28, 2023**

BETWEEN

MOTEMPA SUAKEI SITEYA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SUAKEI OLE SITEYA KORONGOLO) PLAINTIFF

AND

**CHARLES OMONDI OLUTE 1ST DEFENDANT
DAVID MUTUNKEI 2ND DEFENDANT
JULIUS SINKEET 3RD DEFENDANT
DISMAS OPANDE OGOT 4TH DEFENDANT
TOM AYIEKO OKUNDI 5TH DEFENDANT
AGNETA MOLLY AWINO 6TH DEFENDANT
ALFRED OTIENO OCHIEL 7TH DEFENDANT
LEONIDA FAUSTINE ATIENO OMONDI 8TH DEFENDANT
THE LAND REGISTRAR – KAJIADO 9TH DEFENDANT**

RULING

1. The ruling in respect of the two applications filed by the 1st, 6th -8th defendants.



2. The Notice of Motion dated October 14, 2022 is brought Under;
(Under Article 47, 50 and 159 of the [Constitution of Kenya](#) 2010, Order 8 Rule 3(2), (3) and 5(1) of the [Civil Procedure Rules](#) Cap 21 Laws of Kenya and all other enabling provisions of the law).
3. It seeks Orders;
 1. That leave be granted to the 1st and 7th Defendants to withdraw their witness statements that are on the record as being theirs and adduce new witness statements since the 1st and 7th Defendants deny signing the current witness statements that are on the record and dispute some of their contents.
 2. That leave be granted to the 1st and 7th Defendants to amend pleadings and file defence, witness statements and list of documents.
 3. That upon the application being allowed the plaintiff will be served with the amended pleadings, within thirty (30) days.
 4. That the plaintiff be at liberty to amend their plaint within thirty (30) days after service of the amended pleadings.
 5. That the costs of this Application be in the cause.
4. The grounds are on the face of the application and are set out in paragraph (a) to (e).
5. The Application is supported by the affidavit of Charles Omondi Olute, the 1st Defendant herein, and Alfred Otieno Ochiel, the 7th defendant, both sworn on the 14th October 2022.
6. The second Notice of Motion is also dated 14th October 2022. It is brought under;
(Under Order 18 Rule 10 and Order 51 Rule 1 of the [Civil Procedure Rules](#), 2010, Section 1B and 3A of the [Civil Procedure Act](#) Cap 21 Laws of Kenya, Section 146 (4) of the [Evidence Act](#), Article 50(1) of the [Constitution](#) and all the enabling laws).
7. It seeks Orders;
 1. That, this Honourable court be pleased to issue an order recalling the Plaintiff to the stand for cross-examination.
 2. That this Honourable Court be pleased to allow the 6th Defendant and the 8th Defendant to be added to the list of witnesses and subsequently admit their witness statements.
 3. That upon the application being allowed the Plaintiff will be served with the witness statements of the 6th and 8th Defendant, within thirty (30) days.
 4. That the plaintiff be at liberty to amend their pleadings within thirty (30) days after service of the witness statements.
 5. That the cost of this application be provided for.
8. The grounds are in the face of the application and are set out in paragraph's (a) to (d).
9. The Application is supported by the affidavit of Charles Omondi Olute, the 1st Defendant sworn on the 14th October 2022.



10. The plaintiff has filed a response to the two applications. She opposes them on the grounds that they are an abuse of the court process, mischievous and are meant to delay this matter. She prays that they be dismissed with costs.
11. Ms. Kariuki who appears for the 4th, 5th defendants said that they were not opposing the application.
12. On the 13th March 2023, the court with the consent of the parties directed that the Notice of Motion be canvassed by way of written submissions.
13. The Plaintiff/Respondents submissions dated 26th April 2023 while the 1st, 6th – 8th defendants' are dated 31st May 2023.
14. It is the 1st, 6th – 8th Defendants submissions that their applications are justifiable and urge the court to exercise its discretion to allow the applications so as to give the defendants an opportunity to defend their cases fairly.
15. The Plaintiff/Respondent's submissions are that the Applications were not made timeously. Further that the intended amendments will prejudice the plaintiff who has been waiting for justice since 2014. She prays that the applications be dismissed with costs.
16. I have considered the two Applications, the affidavits in support the responses thereto and the authorities cited the issue for determination is whether they are merited.
17. Order 8 rule 5 of the [Civil Procedure Rule](#) provides;

“

“(1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.

(2) This rule shall not have effect in relation to a judgment or order”.

It appears to the court that the above rule allows for amendment of pleadings notwithstanding that the effect of such an amendment is to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.

18. It has also been held that amendments sought before trial should be freely granted if such amendments are necessary to put the facts in dispute between the parties before the court, for proper adjudication of the matter and further that there would be no injustice occasioned to the adverse party as costs will ordinarily be adequate compensation.
19. I find that the Applicants ought to be granted in opportunity to defend their case in the best manner possible.

I am satisfied that sufficient reasons have been put forward to warrant the grant of the orders sought.



20. Order 18 rule 10 of the *Civil Procedure Rule* provides;

“The court may at any stage of the suit recall any witness who has been examined, and may, subject to the law of evidence for the time being in force; put such questions to him as the court thinks fit”.

I also find that no prejudice will be occasioned to the Plaintiff if she is recalled to testify.

21. In conclusion I find merit in the two applications and I grant the orders sought namely;

a. That leave is hereby granted to the 1st and 7th defendants to withdraw their witness statements on record and adduce new witness statements within 14 days from the date of this ruling.

b. That leave is hereby granted to the 1st and 7th defendants to amend and file the defence witness statements, list of documents within 14 days from the date of this ruling with corresponding leave to the plaintiff to amend if need be.

c. That the plaintiff be recalled for cross examination.

d. That the 6th and 5th defendants be added onto the list of witness statements and be called to testify.

e. That the 1st, 6th 8th defendants do pay to the plaintiff throw away costs of Kshs.15,000/= within 14 days from the date of this ruling.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28TH DAY OF SEPTEMBER 2023.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

Ms. Wandera for Ms. Lois Mwendu for the 1st, 6th – 8th Defendants.

Ms. Njeri Kariuki for the 4th, 5th Defendants.

Mrs. Rotich for the Plaintiff/Respondent.

Court Assistant – Mutisya.

