



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**ELC 249 OF 2012**

**ESTHER KABUGI NJUGUNA.....PLAINTIFF**

**VERSUS**

**MARTHA CHEBET.....1<sup>ST</sup> DEFENDANT**

**THE DISTRICT LAND REGISTRAR NAKURU.....2<sup>ND</sup> DEFENDANT**

**THE ATTORNEY GENERAL OF KENYA.....3<sup>RD</sup> DEFENDANT**

**RULING**

***(Application to amend plaint to include a party; proposed party holding a charge over the suit property; application allowed).***

1. The application before me is that dated 19 February 2018 filed by the plaintiff. It is an application seeking leave to amend the plaint, so as to add The Postal Corporation of Kenya, as a defendant in this suit.

2. The plaint itself was filed on 13 August 2009. In the plaint, the plaintiff pleaded that he is the owner of the land parcel Nakuru/Olongai Phase II/244 which he purchased from the 1st defendant on 3 March 1999. It is averred that the 1st defendant colluded with the Land Registrar, the 2nd defendant, to have the land transferred to the 1st defendant. It is also pleaded that on 1 February 2000, the 1st defendant charged the suit land to The Postal Corporation of Kenya. In the suit the plaintiff has sought orders of permanent injunction against the 1st defendant, a declaration that he owns the suit land, and an order of rectification of the register to cancel the title of the 1st defendant.

3. The case was slated for hearing on 12 February 2018, when I pointed out to counsel for the plaintiff, that if the title of the suit land is charged, it may be important for The Postal Corporation to be a party, as they hold a charge.

4. It is pursuant to that issue that this application has now been filed. I directed The Postal Corporation to be served with this application and they appointed counsel to appear. Neither the defendants nor The Postal Corporation have opposed this application to amend the plaint.

5. I have considered the application, the supporting affidavit and draft amended plaint. One of the annexed documents is a copy of the register of the suit land. The same shows that there is a charge registered on 1 February 2000, in favour of The Postal Corporation of Kenya, to secure the sum of Kshs. 800,000/=. The said charge has not been discharged to date. This is also reflected in the annexed copy of the Official Search. In the draft amended plaint, the plaintiff has proposed to add The Postal Corporation as the 4th defendant and has maintained the prayer for rectification of the title, so that it may be free of any charges, restrictions, inhibitions or encumbrances.

6. I find that it is necessary to have The Postal Corporation of Kenya a party to this suit since they hold a charge over the suit land. I therefore allow this application and order the joinder of The Postal Corporation of Kenya as 4th defendant. I direct that the plaintiff do formally file the amended plaint within 14 days from today and the amended plaint be served upon the original defendants and The Postal Corporation of Kenya through their appointed advocates on record.

7. I make no orders as to costs.

8. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 11<sup>TH</sup> Day of April 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of: -**

Mr. Kanyi Ngure for the applicant

Ms. Rahab Muthoni for the Postal Corporation of Kenya

No appearance for the defendants.

Court Assistant : Nelima Janepher .

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**