



**Ombese v Osoro & 2 others (Environment & Land Case 189 of 2016)
[2023] KEELC 22292 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22292 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 189 OF 2016**

M SILA, J

DECEMBER 19, 2023

BETWEEN

RACHAEL KEMUNTO OMBESE PLAINTIFF

AND

JOSEPH NYABUTO OSORO 1ST DEFENDANT

IRENE NYARANGI OSORO 2ND DEFENDANT

BENJAMIN ANGWENYI OGEA 3RD DEFENDANT

(Application to amend plaint; application allowed)

RULING

1. The application before me is that dated 21 July 2022 filed by the plaintiff. She seeks orders for leave to amend the plaint. Nothing was filed to oppose the motion but the hearing of the application took an unusually long time as counsel appearing for the defendants sought time to cease acting for the respondent and priority was given to the application to cease acting.
2. To put matters into context, the suit was commenced on 1 July 2016 by way of plaint. In a nutshell, the case of the plaintiff is that she is the registered proprietor of the land parcel Kisii/Bassi/Bogetaorio II/4747 and that on it is a home that she built with her late husband, one William Jeremiah Ombese. She avers that the defendants, who are her in-laws, trespassed into the suit property and the homestead. She claims that they have taken advantage of the death of her husband to do so. In the suit, she inter alia seeks orders to have the defendants permanently restrained from the suit land and general damages for trespass. The defendants filed a joint statement of defence opposing the plaintiff's suit and asserting rights over the suit land. The matter is partly heard as the plaintiff testified though she is yet to close her case.



3. In the subject application, the plaintiff seeks to amend the plaint on the basis that the plaint does not bring out the entire issues and contains omissions which may be corrected by amendment. There is an annexed draft amended plaint which I have looked at. What that draft amended plaint states is that the late husband of the plaintiff purchased the suit land from one Mogutu Ogega (now deceased) while it was still forming part of the land parcel Bassi/Bogetaorio II/1565. The estate of the late Mogutu was distributed by one Alloys Tumbo Ogega which resulted in the creation of the suit land, i.e the parcel Kisii/Bassi/Bogetaorio II/4747. However, the distribution of the land was successfully challenged leading to cancellation of the title Kisii/Bassi/Bogetaorio II/4747. The plaintiff now avers that the land she is claiming, which measures 0.59 Ha, is contained in a new title, which is the parcel Bassi/Bogetaorio II/6890 measuring 1.95, registered in the name of the 3rd defendant. She proposes to ask for orders inter alia that the portion of 0.59 Ha is held in her trust or in the alternative that she has been in adverse possession of it.
4. As I mentioned earlier, there was nothing filed to oppose the motion. Courts are generally liberal when it comes to allowing a party to amend his/her pleadings unless there will be prejudice to the other party. I see no prejudice to the defendants as they will have a chance to amend their pleadings accordingly. In our case, it would appear that the amendment has been occasioned by a change in title, which occurred while this case was still pending. The land that the plaintiff claimed in the original plaint is no longer comprised in the title Kisii/Bassi/Bogetaorio II/4747. I have no reason not to allow the plaintiff to amend her plaint and plead her case as she wishes.
5. I thus allow the application to amend. The amended plaint be filed within 14 days and be served in the usual manner. Upon service, the defendants have 14 days to amend their defence.
6. I make no orders as to costs.
7. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 19TH DAY OF DECEMBER, 2023.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

In presence of: -

Ms. Nyaenya instructed by M/S Bosire Gichana & Co for the plaintiff/applicant

2nd defendant present acting in person

1st & 3rd defendants acting in person – Absent

Court Assistant – Lawrence Chomba

