



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL SUIT NO 101 OF 2010.

SUSAN KATHAMBI (suing as legal representative of the estate of SILAS KINOTI M'RINGERA.

S/O

IKWINGA.....PLAINTIFF

VERSUS

RINGERA S/O IKWINGA.....1ST
DEFENDANT

GEDION MURIUKI.....2ND
DEFENDANT

R U L I N G

1. This application is dated 10/06/2015 and seeks orders:-

1. ***THAT the plaintiff be given leave to amend his plaint.***
2. ***THAT the amended plaint be deemed as duly filed***

2. The application has the following grounds:-

1. ***THAT at the time I filed the plaint , I genuinely believed that the first defendant had allocated to my late husband KIBIRICHIA/ KIBIRIRICHIA/1324 as the mutation forms in my possession indicated.***
2. ***THAT I have since realised that those mutation forms were destroyed and fresh ones drawn.***
3. ***THAT the area of land I occupy and where my homestead is situated is traversing two parcels of land KIBIRICHIA/KIBIRICHIA/ 4169 and KIBIRICHIA/KIBIRICHIA/4170.***
4. ***THAT only one parcel of land KIBIRICHIA/KIBIRICHIA/4170 has been alienated to the proposed second defendant and all the rest of the parcels are in the name of the first defendant.***
5. ***THAT it is in the interests of justice that the proposed amendment be allowed.***
6. ***THAT the proposed defendants will not be prejudiced in any way.***

3. The Defendants/Respondents filed grounds of opposition dated 21/10.2015 which states:-

1. The application and the reliefs sought are Res-Judicata same having been canvassed in the application dated 7/1/2013.
2. The application is not merited and is mala fides.
3. The application has no cause of action against the 2nd Defendant.
4. The applicant has submitted that the law allows a party to amend his pleadings at any time before Judgment. It is claimed that Section 100 of the Civil Procedure Rules allows a party to amend his pleadings “for the purpose of determining the real question or issues raised by the proceedings”. The Applicant opines that the proposed amendment is merited and ought to be allowed. The applicant terms the grounds of opposition filed by Mr. Murango Mwenda , for the defendants as unmerited . The applicant laconically states that the issue of *res judicata* does not arise.
5. The Respondents oppose the application and say that it is *res judicata* a similar application dated 7/1/2013 which was fully canvassed and dismissed by the Court. The respondents opine that the applicant should not be allowed to re-litigate a matter that was fully dealt with by the Court.
6. The respondents submit that the application is made *mala fides* , particularly in wanting to change the suit land. They say that the Plaintiff has already given her evidence and in her Examination-in-chief and in her Cross Examination had insisted that she wanted L.R.NO. KIBIRICHIA/KIBIRICHIA 3124 transferred to her as that was the land her husband had been given. They point out that during cross-examination that the suit land is the property of an entirely different person JOSHUA MWOBOBIA .
7. The Defendants term the sought ammendment as mischievous and made in bad faith in view of the evidence clearly on record. They opine that the application is in bad faith to resurrect the Plaintiff's dead case.
8. The Defendants have submitted that the applicant had no cause of action against the intended 2nd defendant. They say that the intended amended plaint does not disclose any wrong doing on the part of the intended 2nd defendant. They opine that it would be harsh to join the 2nd defendant as a party to the proceedings, when there is nothing to show that he acted wrongfully or fraudulently.
9. I have carefully examined the averments and the submissions proffered by the parties to buttress their respective assertion. Without further ado, I find that the attempt to include Gedion Muriuki as the 2nd defendant is *res judicate* the applicants application dated 7/1/2013. A ruling delivered by this Court on 6th May, 2013 dismissed that application.
10. Somehow, litigation must come to an end. I opine that parties should not be allowed to embark on fisting expeditious whenever they find that evidence that they had rendered to Court had somehow been controverted. If this Court embraces such tendencies, it would set a veritably unruly and undesirable precedent. I refuse to allow the Plaintiff to change goal posts after she had given her evidence-in-chief.
11. Taking into account all the facts and the circumstances, germane to this application, ***I find that it lacks merit. It is, therefore, dismissed.***

12. *I award costs to the Respondents.*

It is so ordered.

Delivered in open Court at Meru this 23rd day of March, 2016 in the presence of;

CC: Daniel/Lilian

P. M. NJORGE

JUDGE