



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
E.L.C.A PETITION NO 1 OF 2014

MBEERE ELDERS ADVISORY WELFARE GROUP..... 1st PETITIONER
DAVID MITI NJUKI..... 2nd PETITIONER
NJERU BANDA..... 3rd PETITIONER
ESTON NYAGA NTHIGA..... 4th PETITIONER
SERAPHINO NGARI..... 5th PETITIONER

VERSUS

THE ATTORNEY GENERAL..... 1st RESPONDENT
COMMISSIONER OF LANDS..... 2nd RESPONDENT
DIRECTOR OF LAND ADJUDICATION..... 3rd RESPONDENT
CHIEF LAND REGISTRAR..... 4th RESPONDENT
DISTRICT LAND REGISTRAR MBEERE DISTRICT (SOUTH)..... 5th RESPONDENT
THE COUNTY COUNCIL OF MBEERE..... 6th RESPONDENT

RULING

INTRODUCTION

The petitioners are seeking orders from this court to amend their amended petition by including the following:

1. That the National Land Commission be enjoined as the 7th respondent.
2. That the Embu County Government through its secretary for Land and Planning be enjoined as the 8th respondent.
3. That the costs of this application be provided for.

They have supported their application by a sworn affidavit of Eston Nyaga Nthiga. The proposed amendments are opposed by the County Council of Mbeere who is the respondent to this application.

The Case for the Petitioners/Applicants:

The case for the petitioners/applicants is that they have been forced by the changes brought about by the 2010 Constitution of Kenya to amend their amended plaint. Simply put, the new Constitution has created the National Land Commission which is charged with the responsibility of managing public land. This commission has replaced the Office of the Commissioner of Lands. The proposed 8th respondent has also replaced the County Council of Mbeere, 6th Respondent. Furthermore, the petitioners/applicants have stated that the amendments are necessary for the proper determination of the issues in dispute.

The Case for the Sixth Respondent

The 6th respondent has opposed the proposed amendments. He says that the allegations of the petitioner are untrue and unfounded. He has further stated that the petitioners/applicants have no right to represent the County Council of Mbeere. Finally, he says that the rights of the petitioners/applicants have not been infringed.

The Applicable Law

The law that governs the amendment of pleadings is governed by ***Order 8 of the 2010 Civil Procedure Rules in particular Rule 5*** thereof. According to the case of ***Eastern Bakery v. Castelino (1958) EA 461 (CA)*** amendments to the pleadings should be freely allowed before trial of a case if they can be made without any injustice to the other side. That court went further to state that injustice will not be caused to the other side if it will adequately be compensated on costs.

Issues for Determination:

In the light of the submissions by both counsel, their affidavit evidence and the law, the issues for determination are as follows:

1. Whether or not the petitioners/applicants have met the criteria for the grant of leave to amend.
2. Whether or not injustice will be caused to the respondents.
3. Whether or not the joinder of the intended parties is necessary for the proper determination of the issues in dispute.
4. Who should pay for the costs of this application

Evaluation of the Evidence and the Law:

Having considered the submissions, the issues raised and the law, I have come to the conclusion that the proposed amendments are necessary for the proper determination of the issues in dispute. The proposed amendments have been brought about by the changes contained in the 2010 Constitution of Kenya. This is clear from the abolition of the former County Councils and their replacement with the County Governments. Additionally, the abolition of the Office of the Commissioner of Lands and it being replaced by the National Land Commission, necessitates that the amendments should be allowed.

Furthermore, no injustice will be caused to the respondents if the orders sought are granted. It is equally necessary that the enjoinder of the proposed parties is necessary for the proper determination of the issues in dispute.

And in respect as to who should pay the costs of this application, I direct that costs of this application shall be costs in cause.

Verdict and Disposal Order:

In the light of what I have stated above, I hereby make the following orders:

1. The application of the petitioners/applicants is allowed in terms of their prayers in the notice of

- motion.
2. Costs of this application shall be costs in cause.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **19th** day of January, **2015**

In the presence Mr Kamunda

Court clerk Mr Muriithi

Right of appeal under Order 43 Civil Procedure Rules explained to the parties.

J.M. BWONWONGA

JUDGE