

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE

CIVIL SUIT NO. 93 OF 1997

OBED READON ONYANGO] PLAINTIFF

VERSUS

FLORENCE JUMA NABISWA] 1ST DEFENDANT

SARAH CHEPKEMBOI NABISWA.....] 2ND DEFENDANT

R U L I N G

The applicant brought a notice of motion dated 16th October 2013 seeking the court's leave to file a further amended plaint. The applicant contends that the plaint as it currently stands describes the suit property as plot No. 52. The applicant depones that he has since learned that the suit property is plot No. 225 as per the new approved Registry index map. It is for this reason that he seeks leave to amend the plaint so as to properly describe the suit property in accordance with the current status.

The application was opposed by Mr. Onyancha Advocate for the respondents based on a replying affidavit of the respondents sworn on 1/11/2013. The respondents contend that the current application is an abuse of the process of court in that the applicant has amended the plaint three times before and that the current amendment is meant to delay the conclusion of this case. The respondents contend that the many amendments are a pointer to the fact that the plaintiff does not know the property he is claiming.

I have gone through the applicant's application as well as the opposition to the same by the respondents. The applicant is merely seeking to have the correct description of the property. The amendment will not prejudice the respondents in any way.

It has been argued by Mr. Onyancha that the change in description of the property can be taken care of during the hearing. I do not agree with Mr. Onyancha's argument. A party is at liberty to correctly describe the property he is claiming in the pleadings. This is the only way evidence adduced orally can be aligned to the pleadings. The applicant is not changing the cause of action and as I have said hereinabove, this amendment will not prejudice the respondents. The mere fact that the applicant has amended the plaint thrice before is not a bar to grant of a fourth amendment. Each application should be considered on its own merits. The court has been told that the amendment has been necessitated by introduction of a new Registry index map. The applicant should be granted opportunity to properly describe the property he is claiming. I find that the application is well founded. I allow the same with costs. The applicant shall file an amended plaint within 14 days from the date of this ruling. A response if any should follow as per the Civil Procedure Rules from the date of service.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of January 2014.

E. OBAGA

JUDGE

In the presence of Mr. Kamau for Plaintiff/Applicant and Mr. Onyancha for defendant/Respondent. Court clerk – Kassachoon.

E. OBAGA

JUDGE

30/1/2014