



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Environmental & Land Case 539 of 2009

PETER C GATOTO

KARANJA.....PLAINTIFF

VERSUS

STEPHEN KARANJA

GATOTO.....DEFENDANT

RULING

Hearing of this suit commenced on **26th February, 2013** when as the first Plaintiff’s witness was being cross examined, it became apparent that the prayer sought in the plaint contained an error. Instead of indicating the correct name of the suit property, which was **Githunguri/Nyaga/1429**, it referred to **Githunguri/Nyaga/1426** and 1427. Upon realization of this error, Counsel for the Plaintiff sought the leave of the Court to correct that error. In seeking this leave, Counsel for the Plaintiff stated that the Defendant will not suffer any prejudice as he will be able to cross-examine and further that it is clear in its defence which property was really in dispute as the parties have a consensus on the suit property.

The application was strongly opposed by the Defendant who contended that this case was filed in 2009 and was only now being heard and that the Plaintiff had enough time to amend the plaint before pleadings were closed. He further argued that what the Plaintiff sought to amend was not a simple error but was an effort to defeat the defense case. He further contended that a party cannot amend pleadings after evidence is taken as the amendment would confirm towards the evidence given. He strongly contended that allowing the amendment would defeat the defense case and that it would amount to asking the Court to descend into the arena of the litigants.

Article 159(2) of the Constitution states as follows:

“In exercising Judicial authority, the Courts and tribunals shall be guided by the following principles –

(d) Justice shall be administered without undue regard to procedural technicalities.”

Section 3A of the Civil Procedure Act provides that:

“Nothing in this Act shall limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

Section 63(e) of the Civil Procedure Act provides as follows:

“In order to prevent the ends of Justice from being defeated, the Court may, if it is so prescribed:-

(e) Make such other interlocutory orders as may appear to the Court to be just and convenient.”

Order 8 Rule 3 (1) provides that:

“The Court may at any stage of the proceedings on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.”

Further, a legal provision that goes to the heart of the matter is Order 8 Rule 5(1) which states:

“For the purpose of determining the real question in controversy between the parties or of correcting any defect or error in any proceedings, the Court may either of its own motion or on the application of any party Order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”

Looking at the error that the Plaintiff seeks to amend, this Court is convinced that it is a genuine and simple error. The Defence as drawn overlooked the error and cited the correct subject matter of this suit which is land parcel **Githunguri / Nyaga / 1429** and not **1426** and **1427**. It would be a contravention of the constitution and the laws cited to allow the whole suit to be defeated on account of such an error. This would defeat the ends of Justice.

In that regard, and in exercise of the authority bestowed by the cited laws upon this Court, I hereby grant the Plaintiff leave to amend the plaint to reflect the correct prayer.

SIGNED AND DELIVERED THE 12TH DAY OF APRIL 2013.

**MARY M. GITUMBI
JUDGE**