



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
Civil Suit 108 of 2005

JOHN KIPTOO SIREN.....PLAINTIFF

VERSUS

CHARLES K. OMBOI

JEREMIAH ONTIRI CHAIRMAN ITEN LANDS
TRIBUNAL THROUGH ATTORNEY GENERALDEFENDANTS

RULING

By Chamber Summons Application dated 20th September 2007 the Plaintiff prays for the following orders:

1. That the Plaintiff be and is hereby granted leave to amend the Plaintiff as per the Amended Plaintiff filed herein.
2. That the Amended Plaintiff be deemed fully filed subject to payment of court fees if any.
3. That costs be provided for.

There is an affidavit in support of the Application sworn by James M. Kathili, Advocate for the Applicant.

The main grounds in support of the application are that the Plaintiff/Applicant was the sole owner of the parcel of land known as ELGEYO MARAKWET/IRONG/ITEN/520 measuring 0.162 Hectares up to the 26th January 2006 when the 1st and 2nd Defendants obtained a new title for a portion measuring 0.1 Hectares known as IRONG/ITEN/2528.

For this reason the Plaintiff wants the new title created that is No. IRONG/ITEN/2528 from the original parcel to be included in the Plaintiff. Also the Plaintiff wants to include a Fourth Defendant, the District Land Registrar, Iten.

The Application is opposed by way of a Replying Affidavit sworn by Jeremiah O. Otiri dated 2nd November 2007 on his own behalf and on behalf of the 1st Defendant. He states that the application is an afterthought and intended to prolong this matter. He avers that the amendment will not be of any use to the Plaintiff because he sold the ¼ acre comprised in the new title to the 1st Defendant and himself. In support he refers the court to the sale agreement in his previous affidavit dated 7/5/2007.

The Defendant further avers that a declaratory suit cannot cancel a title. That under the Government Proceedings Act all suits against Government is filed against the Attorney General and is improper to bring in the 4th Defendant when the attorney general is already a party to this suit. The Defendant states that the it is wrong for the advocate to depone to contested issues in support of the application.

The Plaintiff filed a supplementary affidavit dated 19th March 2008. He states that he has instructed his advocates to depone the supporting affidavit to the application. He states that he did not know the change in the title until his advocates were served with the application dated 7th May 2007 seeking to strike out the suit.

The parties' advocates presented their oral arguments on the 29th April 2009.

Mr. Sitima, Counsel representing the Hon. Attorney Generals on behalf of the 3rd Defendant submitted that he has no instructions from the Tribunal. He stated that they will abide by the Courts decision. The court made an order dispensing with his attendance on the understanding that the amendment shall not include the joinder of the District Land Registrar.

Counsel for the Plaintiff argued that he relies on the Plaintiff's affidavits and the grounds in support of the application. He states that the Defendants obtained a new title IRONG/ITEN/2528. He submitted that the Defendants will not suffer any prejudice if the amendment is allowed.

Counsel for the Defendant Ms Kosgei in her submissions said that she relies on the relying affidavit of the 2nd Defendant. That this application is an afterthought to forestall the application to strike out. She states that the application is defective and brought under the wrong provisions of the law. That it amounts to abuse of the court process. She states that the property was sold to the Defendants. She urged the court to dismiss the application.

I have considered the application, affidavits and submission by counsel.

I would like to state that it is trite law that amendments of pleadings can be allowed at anytime before judgment. It is important that all real issues between the parties are brought before the court and determined to put an end to litigation.

This being a discretionary power the court will look at the reasons advanced by the Plaintiff for amendment and whether there will be prejudice to the Defendant. The Plaintiff in this case explained that there is a new title issued to the Defendant that is IRONG/ITEN/2528. That he wants this new title which formed part of the land he claims known as ELGEYO MARAKWET/IRONG/ITEN/520 be reflected in his pleadings.

The Defendant states that the application is an afterthought and aimed at forestalling their application to strike out.

I am satisfied that the Plaintiff has reasonable grounds to be granted leave to amend his pleadings. The Defendants will not such prejudice as can not be compensated by an award of costs. They will also have the right to amend their pleadings.

I therefore allow the Plaintiff's application for amendment of his Plaintiff. The Plaintiff should file and serve on all the parties his amended plaintiff within 15 days from the date of this ruling. The costs of this application shall be in the cause.

Dated AND SIGNED at Nairobi this 23rd DAY OF AUGUST 2012.

M.K Ibrahim

Judge

DATED AND Delivered at Eldoret on this 26th day of September, 2012.

ABIGAIL MSHILA

JUDGE

In the presence of: Kathili for plaintiff

No appearance for defendant