



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CIVIL SUIT NO. 110 OF 2009

1. SILVESTER NYANJE KARISA
2. GILBERT KARISA
3. FRANCIS

CHARO.....PLAINTI
FFS

=VERSUS=

1. MWANGIRANI PEMBE SON AND PERSONAL *representative* OF PEMBE MUROGO KITHI(DECEASED)
2. THE DISTRICT LANDS REGISTRAR KILIFI
3. THE HONOURABLE ATTORNEY GENERAL.....DEFENDANTS

RULING

By a chamber summons application dated 12th May 2011, the applicants seek leave to amend the Plaint dated 3rd December 2009 and the draft amended Plaint attached be deemed as duly filed and served, upon payment of requisite fees. It is premised on grounds that;-

1. The Plaintiff/applicants filed this suit on 4th December 2009 seeking for nullification of Title Deed for Plot no.876/Kaloleni/Vishakani, and the same be rectified to create a Title Deed for the 3.5acres occupied and(or utilized or cultivated by the Defendant) in favour of the Plaintiffs.

2. That the orders sought herein are necessitated by the fact that the correct names of the Defendant/other necessary parties are **NICHOLAS KOMBE PEMBE** and **ROBERT KITSAO PEMBE** (sons and personal representatives of the Estate of the late **PEMBE MUROGO KITHI**) as shown in the

Defendant`s witness statements dated 6th February 2011.

3. The Defendants will not suffer any prejudice if the leave sought is granted.

The application is supported by the affidavit sworn by **SYLVESTER NYANJE KARISA** who states that the Defendants names as appearing in the Plaintiff, ought to be amended to reflect the correct names of Defendants of Grant issued on 1st November 2004, being one of the exhibits for the defence. The omissions were not intentional and is necessary so as to effectively determine the issues involved in this matter. The application is opposed, and in a replying affidavit sworn by **MWANGRANI PEMBE** (1st Defendant) he states that he is not the administrator of the estate of the late **PEMBE MUROGO KITHI** and for this the suit is a nullity. He states that he has been improperly enjoined in the suit.

The matter was disposed of by way of written submission in which **MR KENGA** for the applicant reiterates the grounds raised by the applicant saying it is necessary to bring the proposed defendants on board for a just determination of the suit. Further that the amendments sought will assist this court to effectively and/or expeditiously and/or conclusively determine this matter in a fair and just manner.

The Respondent`s Counsel submits that the amendments sought are not for determining the question in controversy between the parties herein. Of course the 1st Defendant is not an administrator of the deceased`s estate, but is he the one proposed to be joined in the annexed draft defence.

The persons proposed **NICHOLAS KOMBE PEMBE** and **ROBERT KITSAO PEMBE** and those are the persons whose names are shown in the Certificate of Confirmation of Grant. Their being enjoined in this suit fulfils what is contemplated by section 79 of the Law of Succession that the administrator becomes the personal key of a deceased person`s estate once letters of grant have issued and been confirmed. It would appear that 1st Defendant is really not contesting participating in this suit, but protests his being enjoined in it, saying the person to be enjoined are the ones named in the letters of administration and his name should be struck off. The proposed amended plaintiff mentions the 1st Defendant in paragraph 7, regarding his role in the suit property. On the face of these pleadings, it would be improper to offload him from the suit at this stage. The application is merited as it is definitely necessary to include the proposed Defendants who are administrators of the deceased`s estate to assist this court effectively and conclusive this matter. I allow the application as prayed. Costs be borne by the applicant.

DELIVERED AND DATED THIS 20TH DAY OF JULY 2011 AT MALINDI

H A OMONDI

JUDGE

Mr Shujaa holding brief Kenga for Applicant