



**Stedman v Kibii (Environment & Land Case E030 of 2021)
[2022] KEELC 2492 (KLR) (14 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2492 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E030 OF 2021**

EO OBAGA, J

JULY 14, 2022

BETWEEN

GREGORY LANCE STEDMAN PLAINTIFF

AND

SILAS KIPTOO KIBII DEFENDANT

RULING

1. This is a ruling in respect of a Notice of motion dated December 20, 2021 in which the Plaintiff/Applicant seeks leave of the court to amend his plaint. The supporting affidavit to the application is sworn by his advocate Mr. Charles Duke Nyamweya who depones that upon taking over the conduct of this case, he noticed that the plaint needed to be amended so as to clarify certain legal issues and to bring in another party for proper and effectual determination of the issues in controversy.
2. The Applicant's application was opposed by the Defendant/Respondent based on a replying affidavit sworn on February 14, 2022. The Respondent contends that the Applicant's application is frivolous, vexatious and an abuse of the process of the court. The Respondent further contends that the application is devoid of merit, is incompetent, misconceived, hopeless and has been overtaken by events.
3. The Respondent further contends that the proposed amendments will not assist in determination of the suit as no cause of action has been established against the proposed 2nd Defendant and that the joinder of the proposed Defendant will not serve any purpose other than to complicate and extrapolate the issues in dispute.
4. The parties were directed to dispose of the application through written submissions. The Applicant filed his submissions on March 7, 2022. The Respondent filed his submissions on April 28, 2022. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I



have also considered the submissions by the parties. There is only one issue for determination and this is whether the Applicant has met the threshold for grant of leave to amend the plaint.

5. In the initial plaint, the Applicant had sued only the Respondent. In the proposed amendment, he is seeking to bring in another party. The issue in dispute in this case is over sale of a property known as plot provisional No E150 which is part of parcel known as Elgeyo Border Farm 6802. The party sought to be joined in the proceedings is Elgeyo Border Investments Limited. This is the party which sold the land in issue to the Applicant who proceeded to take possession and carried farming activities from 2014 until 2021 when the Respondent entered the land on allegation that he had purchased the same land in 2021.
6. The Respondent has argued that the affidavit in support of the application has been sworn by an Advocate which should not be the case. I have looked at the said affidavit. It does not contain matters of fact which are contested. It is only seeking to bring in a new party and clarify certain issues which are legal in nature. An advocate is only forbidden from swearing to matters which are contested. There is therefore nothing wrong in the Advocate swearing an affidavit in the circumstances.
7. The Respondent has also argued that the proposed amendments will introduce a new cause of action. In support of this contention, the Respondent relied on the case of *Eastern bakery –vs- Castecino* (1958) EA 462 (CAU) where the court stated as follows:-

“The court will refuse to allow amendment simply because it introduces a new case..... The court will refuse leave to amend where the amendment would change the action into one of a substantially different character....”

8. The Respondent further relied on the case of [*Central Kenya Limited –Vs- Trust Bank Limited 7 5 others*](#) (2000) eKLR where the Court of Appeal quoted from Vol 2, 6th Edition at P 2245, of AIR Commentaries on the *Indian Civil Procedure Code by Chittaley and Rao* in which the learned authors state:-

“...a party is allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and that the amendment can be allowed without injustice to the other side.”

9. I have looked at the proposed amendments. There is no new cause of action being introduced. The new party sought to be brought in is the party who sold the land in issue to both the Applicant and the Respondent. The party’s presence is necessary for the proper and effectual determination of the issues in controversy. Chittaley and Rao in their commentary on Indian Civil Procedure Code (Supra) at page 2248 continue to state that an amendment merely clarifying the position put forward in the plaint or written statement of defence must be allowed.
10. In the case of [*Central Kenya Limited \(Supra\)*](#) the Court of Appeal stated as follows: -

“it is trite law that as far as possible a litigant should plead the whole of the claim which he is entitled to make in respect of his cause of action. Otherwise the court will not later permit him to reopen the same subject of litigation (see order II Rule of the Civil Procedure Rules) only because they have from negligence, inadvertence or accident omitted that part of their case. Amendments of pleadings and joinder of parties is meant to obviate this. Hence, the guiding principle in application for leave to amend is that all amendments should be freely



allowed at any stage of the proceedings provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated in costs (see *Beoco Ltd –Vs –Alfa Laval Co. Ltd* (1994) 4 ALL R 464.”

11. In the instant case, the proposed amendments will not introduce a new cause of action, they will not cause any prejudice or injustice to the Respondent. I therefore find that the Applicant’s application is merited. I allow the same with result that leave is granted to the Applicant to amend his plaint within 14 days. The costs of this application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 14TH DAY OF JULY, 2022.

E. OBAGA

JUDGE

In the virtual presence of;

Ms. Kinyua for Mrs. Lagat for Defendant.

Court Assistant -Albert

E. OBAGA

JUDGE

14TH JULY, 2022

