

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Civil Suit 10 of 2004

OBADIA KIPRUTO KIRUI:.....PLAINTIFF

VERSUS

PETER KIPKEMBOI RONO:.....DEFENDANT

R U L I N G

This is the Plaintiff's application brought under Order VIA rules 3 and 8 of the Civil Procedure Rules praying that he gets leave to amend his Complaint so as to describe the Defendant by his correct names that is to say Jonathan Kipkemboi Rono and not as described in the complaint. It is brought on the ground that such amendment, if allowed will enable a wholesome resolution of the dispute. The supporting Affidavit is sworn by the Plaintiff and in which he states that at the time he filed suit against the estate of the father of the Defendant herein the information then available to him was that the deceased's son who obtained the Grant of Letters of Administration over the estate was Peter Kipkemboi Rono. It was not until he undertook an official search of the Suitland that he realized that the Administrator's correct name was Jonathan and not Peter Kipkemboi Rono. That is the amendment sought.

The application was opposed on the grounds that the application for amendment was brought too late in the day suit having been filed on 21/01/2004. That the application is oppressive and unfair to the Defendant as the wrong person was brought to court at great financial expense and will have to get out of the case with his pleadings and advocates and a new defendant and new advocate be appointed as this is a case not of misnomer but that of introducing a new Defendant. The further ground of opposition which also would support the granting of the orders sought by the Defendant is if the Defendant would be paid his costs for defending the suit this far, fresh summons to enter appearance be served on the new defendant and then the case starts all over again.

It was submitted for the Plaintiff that the amendment was necessary for the effectual determination of the matters in issue. In opposition it was submitted that the amendment was sought after a long delay which is not explained and in any case such amendment would alter the character of the pleadings and the present Defendant would exit.

I note that what the application seeks to amend is the name of the Defendant so as to correspond with the name of the Administrator of the estate of the deceased who was the registered owner of the suit land. The affidavit in support of the application states that such administrator known as Jonathan and not Peter is the son of the deceased and who was appointed the administrator of the estate of his late father after which he got the suit land transferred into his name. The Defendant does not deny the above averments save to say that the person to be introduced in the complaint is a new party who is not himself. If that were so then the Defendant stands to suffer no prejudice whatsoever and no purpose would be served by opposing an application to remove him from a suit he has no business being in. His remedy would be in costs. And the Defendant has not shown that he is Peter and not the Jonathan sought to be introduced. The argument that the application is brought after a long and unexplained delay holds no water the position remains that amendments may be made any time before judgment and the courts will freely allow such amendments so that matters in dispute between parties are placed before court for effectual determination. This application is merited and the same is allowed on the terms that the amended complaint shall be filed within seven (7) days of the date of this Ruling in default of which the orders hereby granted shall lapse. Costs shall be in the cause.

It is so ordered.

DATED SIGNED AND DELIVERED AT ELDORET THIS 19TH DAY OF MAY 2010.

P.M.MWILU
JUDGE

IN THE PRESENCE OF

Mr. Manani - Advocate for Plaintiff/Applicant

Mr. Ngigi Mbugua - Advocate for Defendant/Respondent

Andrew Omwenga - Court Clerk