



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**

**Civil Case 8 of 2007**

**ANGELINE M. NKOIMA (*Suing on behalf of the Estate of Stanley Lemoiyo Nkoimo*).....PLAINTIFF**

**VERSUS**

**ALEX OLE KONYOKIE.....1<sup>ST</sup> DEFENDANT**  
**OLEPARA MASIA KONYOKIE.....2<sup>ND</sup> DEFENDANT**  
**JOSEPH NANYOIKE.....3<sup>RD</sup> DEFENDANT**  
**NORPARALIA CHELANGAT.....4<sup>TH</sup> DEFENDANT**  
**JANE KONYOKIE.....5<sup>TH</sup> DEFENDANT**  
**MERCY KONYOKIE.....6<sup>TH</sup> DEFENDANT**  
**SUSAN CHELANGAT.....7<sup>TH</sup> DEFENDANT**

**RULING**

This is an application for the re-amendment of the amended plaint brought pursuant to sections 3, 3A, 63(e) and 100 of the Civil Procedure Act and Order 64 rules 3, 5, 7 and 8 of the Civil Procedure Rules.

According to a draft of the re-amended plaint, the applicant proposes, in the main, to introduce the following paragraphs:

“10A the plaintiff’s claim against the defendants, is for an order of eviction and permanent injunction restraining the defendants by themselves, servants and/or agents from trespassing, alienating, selling, disposing off, constructing and/or in any way from interfering with the plaintiff’s possession of the land.”

Based on the above, the plaintiff proposes the following relief:

“ia. An order of eviction to issue against the defendants in respect of L.R. No.NAROK/TRANS MARA/INTONA/6 and/or a portion occupied by the defendants.”

The respondents in their replying affidavit do not seem to have a strong objection to the application except they have taken issue with the last limb of the proposed amendments to the effect that they be evicted from L.R. No.NAROK/TRANSMARA/INTONA/6

“and/or a portion occupied by the defendants.”

The respondents argue that the above prayer is ambiguous and highly prejudicial to them.

I have considered these submissions and the authorities cited in support of each side’s positions.

The sum total of the cited provisions of the law and the authorities is to the effect that the court has an unfettered discretion at any time and on such terms as to costs as it may deem fit, to amend any pleadings for the purpose of determining the real question in a controversy. It is long established that in exercising this discretion whether to amend the court is guided by assessment of where justice lies. Some of the facts to be considered include the need to bring an application for amendments timeously; an application for amendments should be allowed if it is made in good faith provided costs can compensate the other side; if a court is not satisfied as to the truth and substantiality of the proposed amendments it ought to be disallowed; the proposed amendments must not be immaterial or useless or merely technical; if the proposed amendments introduce a new case or a new ground of defense it can be allowed unless it would change the action into one of a substantially different character which would more conveniently be made the subject of a fresh action. See Joseph Ochieng’ & 2 others Vs. First American Bank of Chicago, Civil Appeal No.149 of 1991.

All along, in the original plaint and the amended plaint the subject has been NAROK/TRANS-MARA/INTONA/6 measuring

191.7Ha, further described as situated at Ilemeshuki Sub-location, Olalui Location, Kilgoris.

The inclusion of an amorphous prayer that the respondents be evicted from a portion occupied by them is not only suspect but also mischievous.

Such an amendment if allowed has the effect of being misused to evict the respondents in any parcel anywhere in the world. The parcel they occupy is not described sufficiently yet it is trite learning that where the subject matter of litigation is immovable property, the plaint must contain a description of the property sufficient to identify it. See order 7 rule 3 of the Civil Procedure Rules. Learned counsel for the applicant did not state why that portion of the proposed prayer was indispensable.

For the reasons stated, I will allow the application and order that a further amended plaint be filed and served without the offending part within seven (7) days from the day hereof. The respondents may also amend their statement of defence. The applicant to pay to the respondents the costs of this application.

Dated, Signed and Delivered at Nakuru this 9<sup>th</sup> day of June, 2010.

**W. OUKO**

**JUDGE**