

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 293 of 2009

SAMUEL KIRIAMPUS OLE.....PLAINTIFF

VERSUS

STANLEY TIMINA OLE KOONYO.....DEFENDANT

RULING

This is an application for amendment of the plaint and joinder of parties. It proceeded *ex parte* when the respondent, although duly served did not respond to it or attend court when it was canvassed.

The applicant in his affidavit in support of the application has stated that he would like to join in this suit by way of an amendment the Attorney General (AG) on account of the activities of the defendant who is claiming that the suit land belongs to Government.

The applicant also wishes to include in the suit the Kenya Wildlife Services (KWS) for the reason that the defendant is using KWS guards to provide security along with Administration Police. They have ejected the applicant from the suit land and are preparing to put up structures on the land., which the applicant claims to be his. Those averments have not been challenged.

Prima facie on the strength of a copy of the title deed exhibited to this file, the suit land is registered in the name of the applicant. He has deposed that he has been dispossessed of the suit land by forceful eviction and there are activities on the land which are instigated by the defendant, who is the area chief, ostensibly carrying out those activities for and on behalf of the Government. Other than joining the A.G. and KWS the applicant seeks to amend the plaint to expound on the activities on the suit land.

It is now settled law that whether or not to grant leave to amend pleadings is a matter of judicial discretion; that amendments sought before trial should be freely granted if such amendments are necessary for the purpose of determining the real question or issue in the dispute on such terms as to costs or otherwise as may be just.

See **Macharia Vs. Guardian Bank Limited & Another** (2003) KLR 271. Secondly where the proposed amendment has the effect of adding a new party to the suit, the court must ensure that the new party is not prejudiced. See **Atieno Vs. Omoro** (1985) KLR 677.

Finally so long as the court is satisfied that the applicant is acting in good faith in seeking leave to amend the plaint, the application must be allowed. The application seeks to bring amendments which will enable the court to determine the real issues in controversy. I see no prejudice to the AG and KWS. Finally, the amendments proposed are made in good faith.

For these reasons, the application is allowed and it is ordered that an amended plaint be filed and served within fourteen (14) days from the date of this ruling. The Attorney General and Kenya Wildlife Services will be joined in the suit as 2nd and 3rd defendants respectively. The respondent may amend his defence accordingly.

Costs shall be in the cause.

Dated, Signed and Delivered at Nakuru this 15th day of July, 2010.

W. OUKO
JUDGE