

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Case 83 of 2003

JOSIAH MAGUT

CHRISTOPHER SUMBAEI

DAVID CHEPSIROR & 47 OTHERS T/A KAPSARET HELP GROUP:...PLAINTIFFS

VERSUS

LONRHO AGRO BUSINESS (E.A) LTD.....DEFENDANT

RULING

The Plaintiff has brought this application under Order 1 Rule 10 and Order 6A rule 3 CPR seeking to be granted leave to amend their plaint. I have noted that the original plaint had been amended and two more defendants enjoined. The current application is to enjoin a further three defendants in the suit bring the total number of the defendants to six. The application therefore should have indicated that it was for leave to amend the amended plaint. The annexed draft clearly shows that:- **DAVID K. KCHEPSIROR.**

The 3rd plaintiff swore a supporting affidavit. He deponed that the plaintiffs have since the filing of the suit realized that the lands in dispute have been sold and transferred by the defendants to other parties. These are the parties they want to bring on board as the 4th, 5th and 6th defendants. Their counsel submitted that the orders the plaintiffs seek cannot be granted if the intended defendants are not enjoined.

Application was opposed. The grounds of opposition were filled, and it was also submitted that an amendment to pleadings is not automatic and that there was inordinate delay in bringing this application as the suit was filled in the year 2003. Mr. Kamau also took issue with the deponent of the supporting affidavit and said he had not shown he had authority from the other plaintiffs to swear it.

I have evaluated the application, the supporting affidavit, the grounds in opposition and the submissions by both counsels. I find merit in the application. Court has been told that since the filing of the suit, the applicants have found that the suit lands have been transferred to other parties. It is therefore necessary to bring those other parties who are said to be the current registered owners on board if the court has to properly arbitrate over the issues raised by the plaintiffs. Even if, after hearing the suit, the court were to grant the plaintiffs the orders they are seeking-and I am not saying the court will – those orders cannot be enforced as the suit lands are said to be currently registered in other parties other than the defendants. It will also be unfair to decide on the issue of those lands without hearing the position of the current registered owners. It is therefore necessary they be made parties.

I have looked at the annexed draft of the amended plaint and there are no new issues or cause of action being introduced. The respondent will therefore suffer no prejudice if the application is allowed.

Counsel for the respondent raised the issue of inordinate delay but I think this is so. True the suit was filed in the year 2003 and the application was brought in 2006. Order 6A Rule 3 (1) CPR provides that court can allow an amendment at any stage of the proceedings. The hearing of this suit has not started and I therefore don't think that it is too late to bring the application. There will no injustice to the

respondent if the court allows the amendment as the respondent can be compensated by way of costs.

I therefore find the application is reasonable and the same is allowed. The applicants/plaintiffs are granted leave to file an amended amended plaint within 15 days from today's date which should be served on the respondents and also on the three intended defendants who will be at liberty to file their pleadings after service.

The applicants will pay the costs of this application to the respondents.

Dated and delivered at Eldoret on this 7th day of February,2007.

KABURU BAUNI

JUDGE

Ruling delivered in the presence of:-

C/C - David

for Applicant

for Respondents.