

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 2044 of 1993

KENYA ACCOUNTANTS AND SECRETARIES

NATIONAL EXAMINATION BOARD PLAINTIFF

VERSUS

PAUL KIPKEMBOI CHEMNG'OREM 1ST DEFENDANT

RULING

By its Application of the 11.3.2005 the Applicants seeks to further amend their Complaint herein, and join the Commissioner of Lands and Attorney General on behalf of the Director of Surveyor as a party. The reason for the joinder of these parties is to apply for an order for the rectification of the register in respect of the suit premises.

The reasons for the amendments are set out in the Supporting Affidavit to the Application. The Applicant states that the 1st Respondent having surrendered his title got a new grant for a bigger portion of land, which it is alleged, encroached upon the Applicant's land.

The 1st Respondent opposed the application on a number of grounds.

1. The amendment is time barred.

There was reference to the Limitation Act. However in my view the relief sought by the Applicant is equitable as such the amendment can only be barred if the doctrine of laches applies. I see nothing in the proposed amendments, which can be considered as a new cause of action which is time barred. What the proposed amendments does is to set out facts on which it is alleged the 1st Respondent was given a portion of the Applicant's land by irregularity or error. The onus of proving this lies on the Applicant. However I do not see that the 1st Defendant's rights will be abrogated or infringed by such an enquiry nor will the amendments cause any prejudice to the 1st Defendant.

2. The Attorney General should have been served with Notice of intention to sue under section 13A of the Government Proceedings Act. This however is a matter for the Applicant to prove and is not a reason not to join the intended new parties. I am of the view that the intended new parties are necessary parties to dispose of the matter in dispute between the parties.

3. Finally, Under O.6 (a) of the Civil Procedure Rules the underlining of the proposed Further Amended Complaint is not in accordance with this order.

I order the Applicant's Advocates to produce a new copy of the intended Further Amended Complaint.

In the result I allow the amendments as necessary to determine the real matters in controversy between the parties. Costs in cause. The Further Amended Complaint is to be filed and served within 14 days from today. This is an old suit, which must be set down for hearing in the last term of this year.

Dated and delivered at Nairobi this 8th day of July.2005

P.J. RANSLEY

JUDGE