



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO.79 OF 2015

PENROSE SHILASALA NAMISI.....PLAINTIFF

VERSUS

THE GOVERNMENT OF

TRANS NZOIA COUNTY.....1ST DEFENDANT

COUNTY PUBLIC SERVICE BOARD

OF TRANS NZOIA.....2ND DEFENDANT

RATILAL GOSAR GODHIA.....3RD DEFENDANT

VIPUL RATILAL.....4TH DEFENDANT

AVIR KANTI SHAL.....5TH DEFENDANT

RULING

1. The application dated **14/1/2021** which was filed in court on **19/1/2021** was brought by the plaintiff under Order 8 Rule 3(1), Order 3(1) & 2, Order 1 Rule 9 & 10(2), Order **51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya, Article 50 of the Constitution 2010.** The plaintiff seeks the following orders:-

(1) ...spent

(2) ...spent

(3) That the plaintiff/applicant be granted leave to amend her plaint to enjoin BENJAMIN NYAMUMBO OONGE as a defendant in this suit and to amend certain aspects of the plaint as per the annexed draft hereto.

(4) That upon grant of leave in prayer 3 above, the plaintiff be at liberty to file the amended plaint and serve the same upon the defendants upon payment of requisite court fees within a period stipulated by the honourable court.

(5) That the plaintiff/applicant be granted leave to file a further list of documents and a further list of witness.

(6) That the costs of this application be provided for.

2. The application is supported by the affidavit of the plaintiff sworn on **14/1/2021.** The grounds on the face of the application is that Benjamin Nyamumbo Oonge transferred the suit land **Kitale Municipality Block 7/20** to the **3rd, 4th** and **5th** defendants without the consent of the plaintiff; that the proposed amendments are intended to bring before this court the real issues in controversy between parties herein so that the same are determined on their true and substantive merits; that none of the witnesses in the suit has testified so far; that the documents intended to be included as part of plaintiff's further list of documents were inadvertently omitted while other documents were not within the reach of the plaintiff; that the further witnesses the plaintiff intends to call will assist this court determine the real issues in controversy before this court on merits and that no prejudice will be occasioned to the defendants.

3. There was no response to the application and the applicant filed submissions in support thereof on **10/2/2021.** I find the application dated **14/1/2021** is therefore unopposed.

4. Under **Order 1 Rule 10(2)** of the **Civil Procedure Rules** the court may at any stage of the proceedings order the joinder of any party who it may consider as a necessary party to the proceedings for the effectual determination of all questions or the real issues in controversy between parties which arise in the present litigation.

5. In this particular case the plaintiff seeks to enjoin the person who allegedly transferred the suit land to the 3rd, 4th and 5th defendants without her consent as a defendant in the suit and to amend the plaint accordingly. I find that this course of action has not been undertaken by the 3rd, 4th and 5th defendants and that it is therefore necessary.

6. Consequently I grant the application dated **14/1/2021** in terms of **Prayers Nos. (3) (4) and (5)** thereof. **Benjamin Nyamumbo Oonge** shall be enjoined as the 6th defendant herein. The amended plaint shall be filed and served upon all defendants within **14 days** of this order. This suit shall be mentioned on **1/3/2021** for directions as to hearing.

It is so ordered.

Dated, signed and delivered at Kitale via electronic mail on this 16th day of February, 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE.