



REPUBLIC OF KENYA



**Kipapei v Kaisa & 3 others (Environment & Land Case 14 of 2021)
[2023] KEELC 20442 (KLR) (4 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20442 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 14 OF 2021
MN GICHERU, J
OCTOBER 4, 2023**

BETWEEN

PAUL OSEUR KIPAPEI PLAINTIFF

AND

JOEL KASHU OLE KAISA 1ST DEFENDANT

ESTATE KAISA OLE MAMBIA KINYEI 2ND DEFENDANT

KAAKAI KAISA 3RD DEFENDANT

EUNISE KAISA KASHU 4TH DEFENDANT

RULING

1. This ruling is on the Notice of Motion dated 6/10/2022. The motion which is by the plaintiff seeks the following orders.
 - i. That the respondents, their agents, servants and/or whosoever acting through them be directed to maintain status quo or the suit premises, to suit land title No. Kajiado/Elangata Waus/8 pending the hearing and determination of the main suit.
 - ii. That the Officer Commanding Maili 46 Police Station be directed to maintain Law and order by enforcing the operation of this order pending the determination of the main suit.
 - iii. That leave be granted to the plaintiff to amend the plaint dated 27/5/2023 per the annexed draft.
 - iv. That costs of this application be in the cause.
2. The motion which is brought under sections 1A, 1B and 3A of the *Civil Procedure Act*, Orders 40 rule 1, 8 rule 3 and 51 rule 1 of the *Civil Procedure Rules* and all other enabling provisions of law is premised on fourteen (14) grounds, a supporting affidavit and four annexures which include three (3)



blurred black and white pictures and a copy of the draft amended plaint. The gist of the above material is that the plaintiff claims 121.43 hectares of the suit land which measures 696 hectares. His parcel is clearly identified because the defendant's father had obtained the consent of the Land Control Board to subdivide the entire parcel into four (4) parcels and had signed the transfer documents. The land is now in danger of material and irreparable damage through irreversible degradation and deterioration of the plaintiff's portion due to unlawful acts of the defendants.

Further to this, there is need to amend the plaint to join the second and third defendants who are currently witnesses in this suit and administrators of the estate of the deceased. When the suit was filed in 2013, they were no witnesses or administrators hence the need to join them now.

3. The Motion is opposed by the respondents and Eunice Kaisa Kashu has sworn a replying affidavit dated 2/12/2022 in which she denies being a trustee for the plaintiff in respect to the said land. She denies that the said land is in danger of being wasted as alleged by the plaintiff and it is not fair that the entire suit land comprising of 690 hectares should be restrained when the plaintiff claims only 121.43 hectares. For these and other reasons, the defendants pray for the dismissal of the plaintiff's motion.
4. Counsel for the parties were to file written submissions but the only ones that I see on record are those of the defendant filed on 6/4/23.
5. I have carefully considered the application in its entirety including the affidavits, grounds, annexures, submissions and the law cited therein.

Firstly, on the amendment sought, I find that under order 8 rule 3 Civil Procedure Rules, amendment can be at any stage of proceedings, so long as the other party is given leave to amend. It would not be fair or just to deny a party seeking to amend that right because it would mean that all the issues in dispute and all the relevant parties will not join yet they are key to the just determination of the suit. It would be denying the party seeking the amendment a fair trial yet that right is guaranteed by the Constitution at article 50(1) of the Constitution.

6. Regarding the maintenance of the status quo, I find that not sufficient material has been placed before me to prove the destruction of property on the suit land.

The supporting affidavit does not mention the date of the destruction and who is responsible for the destruction. Secondly, out of the four sub-divisions of the suit land that the plaintiff alluded to, he did not prove that it is the one that he is entitled to that is being wasted. Involving the OCS Maili 46 before the plaintiff has proved the case and obtained a decree would be premature because it would be execution before hearing the suit and before determining the issues in dispute.

For the above stated reasons, I allow the Notice of Motion in terms of prayer three (3) only. Draft amended plaint deemed as duly filed and served. Defendants may file and serve defence/amended defence within 21 days.

Pleadings open for 60 days from today's date. Costs in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 4TH DAY OF OCTOBER, 2023

M.N. GICHERU

JUDGE.

IN THE PRESENCE OF:

Plaintiff's Counsel.

Defendant's Counsel.



Court Assistant – Mpoye.

