



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CONSTITUTION PETITION NO. 10 OF 2015

**IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND
FREEDOMS OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL**

AND

IN THE MATTER OF LAND PARCEL NO. 11351 ANKAMIA ADJUDICATION

ELIZABETH KABURO.....PETITIONER

VERSUS

DAUGLAS MIRITI.....1ST RESPONDENT

THE LAND ADJUDICATION OFFICER TIGANIA WEST DISTRICT.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. The application dated 22.1.2022 seeks leave to amend the petition dated 4.5.2015. It is supported by an affidavit of Elizabeth Kaburo sworn on 22.1.2021.

2. The grounds are that the amendments are intended to bring out issues surrounding the AR objection cases that were done by the 1st respondent; it will enable the court to determine all the issues regarding the subject parcel of land and that there will be no prejudice to the respondents.

3. The 1st respondent is opposed to the application through a replying affidavit sworn on 28.1.2022.

4. The reasons are that the application lacks merits; it is a delaying tactic, it is being too late since 2015; it is an abuse of the court process; the applicant is never ready and does not comply with the court's directions over timelines and that instead of filing written submissions as ordered by 30.1.2022, the applicant has instead filed the application.

5. The 2nd and 3rd respondents have submitted they are not opposed to the application.

6. Having gone through the application and the replying affidavit, the issues for determination are:-

a. Whether the amendment should be allowed.

b. If the application has merits.

7. Rule 18 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 provides for amendment of pleadings at any stage of the proceedings with leave of court.

8. The petitioner in her affidavit in support of the application has explained the reasons why she needs to amend the petition. She has attached the proposed draft of petition. The amendments she seeks to bring on board are factual information regarding AR objection No. 1443 filed by the 1st respondent over Parcel No. 267 on 15.11.2012 and another one with Benjamin Aburuki on 16.4.2015.

9. Other than paragraph 20 – 24 of the petition, the amendment seeks to add prayer No. C in place of prayer No. D.

10. The 1st respondent does not state how the proposed amendment shall prejudice him.

11. In the 1st defendant/respondent witnesses' statement filed on 21.6.2018 it is admitted he filed objection No. 1443 which was heard and determined and the decision implemented.

12. My view is the proposed amendments are only introducing facts revolving around objection No. 1443 concerning Parcel No. 267. The 1st defendant witness M'Limbiru M'Aburuki has also confirmed in his witness statement that the objection was allowed on 16.4.2015.

13. The 1st defendant's list of exhibits dated 13.5.2015 includes the statement of one Benjamin Aburuki as an objector and the proceedings thereof.

14. In essence therefore, I do not see how the introduction of facts already contained in the 1st defendant/respondent's own documents would prejudice him more so when once the amendment is allowed, he will still be given a chance to respond it.

15. In *Institute for Social Accountability and Another –vs- Parliament of Kenya & 3 Others [2014] eKLR*, the court held that as a general principle, courts will normally allow amendment of pleadings at any stage of the proceedings if it can be done without occasioning injustice or prejudice to the other party and which prejudice can be compensated by an award of costs

16. Amendments are generally aimed at making the function of the court more effective in determining the substantive merits of the case so that the court can determine the real questions in controversy.

17. The 1st respondent has not stated that the proposed amendments are made in bad faith and or are frivolous or change the substratum of the petition or are inconsistent with the petition.

18. The 1st respondent has also not alleged the amendment would affect his vested interest or accrued legal right or is adding a new party.

19. In *Rogers Mogaka Mogusu –vs- Geoffrey Onyango Oloo & 2 Others [2014] eKLR*, the court held in determining whether or not to allow an amendment of a petition, the court is not concerned with the substantive merits of the petitioner's case as those are matters to be canvassed at the hearing but on whether the proposed amendments will help the court conclusively determine the issue before it so as to avoid the filing of multiplicity of cases.

20. In my considered view therefore, I find the applicant has satisfied the principles and grounds for an amendment of a petition as set out in the foregoing case law.

21. The application is therefore allowed with costs to the respondents. The amended petition shall be filed and served within 7 days from the date hereof.

22. The respondents are granted 21 days to file any responses to the amended petition.

23. Since the deadline for the filing of the written submissions is over, parties are at liberty to amend their submissions if need be by the next mention date set for 23.3.2022 so as to take a judgment date.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 9TH DAY OF FEBRUARY, 2022

In presence of:

Kaume for petitioner

Ayub Anampiu for 1st respondent

Mr. Kieti for 2nd and 3rd respondents

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE