



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 305 OF 2012

DICKSON K. YATICH.....1ST PLAINTIFF

RICHARD C. CHELIMO.....2ND PLAINTIFF

JOHNNAH KIPLAGAT.....3RD PLAINTIFF

JOHN C. RONO.....4TH PLAINTIFF

CHERONO ROTICH (representing 220 members of

KIPNGOCHOCH CO.LTD).....5TH PLAINTIFF

VERSUS

OBADIAH K. KIPKORIR.....1ST DEFENDANT

JOHN MARK MOI.....2ND DEFENDANT

JAPHETH K. CHEPKERES.....3RD DEFENDANT

WELDON LABATI.....4TH DEFENDANT

LAND REGISTRAR.....5TH DEFENDANT

ATTORNEY GENERAL.....6TH DEFENDANT

RULING

(Application for leave to amend pleadings; suit yet to commence; no prejudice which will be caused to the defendants; application allowed)

1. The application before me is that dated 14 December 2018 filed by the plaintiffs. The application is brought pursuant to the provisions of Order 8 Rule 3 of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act, Cap 21, Laws of Kenya. The principal order sought in the application is for leave to amend the pleadings.

2. To put matters into context, this suit was commenced through a plaint which was filed on 8 June 2012. There are 5 plaintiffs and they aver that they have brought this suit on behalf of 220 members of Kipngochor Company Limited. It is pleaded in the plaint that 1st, 2nd, and 4th defendants were at some point the officials and trustees of the company and that they fraudulently sold the land parcels Solai/Ndungiri Block 1/232 and 235 to the 2nd defendant without the knowledge of the members. They thus sought to have the title of the 2nd defendant cancelled. The 1st and 4th defendants filed a joint statement of defence. It is admitted that the 1st and 4th defendants were officials of the company whereas the 3rd defendant was its manager. It is however denied that the sale of the suit lands to the 2nd defendant was fraudulent.

3. To this application, the applicants have annexed a draft amended plaint. First, it is proposed to remove the 6 individual plaintiffs and have Kipngochoch Farm Company Limited as the plaintiff. The other substantive amendments are to plead particulars of fraud and particulars of breach of duty. In addition, there is intent to amend the prayers in the plaint, to make them more elaborate and to add prayers for mesne profits and damages of Kshs. 2,000,000/= said to be costs of a building that was built on the land and which the 2nd defendant is alleged to

have destroyed.

4. The application is not opposed. On my part, I do not see any reason why I should decline the order to amend. Courts are generally fairly liberal when it comes to allowing a party to amend his/her pleadings, the general principle being that amendments to pleadings should be allowed unless there will be prejudice to the other party which cannot be compensated by an award of costs. (See the case of *Eastern Bakery vs Castellino (1958) EA 461*).

5. I do not see any prejudice which the defendants stand to suffer for the case has not yet begun and they will have opportunity to amend their defences and also counter the new pleadings through evidence.

6. From the foregoing, I allow the application and direct that the amended plaint be filed and served within 14 days. Upon service, the defendants have 14 days to amend their respective defences.

7. On costs, the applicants had an opportunity to plead their case well in the first instance and therefore the defendants will have the costs of this application.

8. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 10th day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Mutembei for the applicants.

No appearance for the respondents.

Court Assistants: Nelima Janepher /Patrick Kemboi

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU