



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 287 OF 2015

KIPKINGWET MZEE YUSUF.....PLAINTIFF

VERSUS

PETER NJUGUNA GITAU.....DEFENDANT

RULING

(Application for leave to amend plaint, application allowed).

1. The application before me is that dated 11 September 2017 filed by the plaintiff. It is an application seeking leave to amend the plaint and the defendant filed Grounds of Opposition to oppose it.

2. The suit itself was commenced through a plaint filed on 14 October 2015. In the plaint, the plaintiff has pleaded that through an agreement executed in the years 2002 and 2004, the defendant agreed to sell to the plaintiff two plots identified as Plots No.1 and 2, to be excised from the land LR No. 12232, and two plots identified as Plots No. 4 and 5, out of the land parcel Nakuru Municipality Block 13/14. The plaintiff pleaded that he paid the required deposit but the defendant has refused to process title in his name or execute the requisite transfer forms. In the suit, the plaintiff asked for orders of specific performance to have the four plots transferred to him alongside costs and interest.

3. Through this application, the plaintiff wishes to amend the plaint to include orders of a declaration that he is the rightful owner of the 4 plots in issue, and also add orders of permanent injunction against the defendant.

4. In the Grounds of Opposition, the defendant has averred that there has been inordinate delay in seeking the amendments sought; that the proposed amendments introduce a new cause of action; and that the entire suit is incompetent as there was no proper pleading on institution of the suit as contemplated under Order 4 of the Civil Procedure Rules.

5. I have considered the application. Courts are generally liberal when it comes to applications to amend pleadings. This is so unless it is apparent that the amendment will cause great prejudice to the other party. In the instance of this case, so far, the matter has not commenced and in fact, parties have not yet gone past the pre-trial stage. I do not therefore see much substance in the argument that the plaintiff has brought this application after inordinate delay. On the argument that the amendments bring in a new cause of action, I do not think so, as what is sought to be added to the pleadings, are orders whose genesis is the same alleged sale transaction which founded the original prayers in the first place. Although Order 4 has been cited by the defendant, I really do not know what specific quarrel the defendant has with the plaint, for Order 4 has 9 rules, and it is not mentioned which rule is said to have been violated by the plaintiff.

6. On my part, I see nothing untoward about the application before me. I see no prejudice which will be caused to the defendant if I am to allow the plaintiff to amend his plaint for the defendant will have a chance to counter anything that will be filed against him. I therefore allow this application and do give leave to the plaintiff to amend his plaint within the next 14 days. Upon service, the defendant can respond in the usual manner. However, I do award costs of the application to the defendant as the plaintiff had the option of pleading his case properly in the first instance.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 4th day of July 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Okiro holding brief for Mr. Andama for the plaintiff/applicant.

No appearance on the part of M/s Robert Ndubi & Co. Advocates for the defendant/respondent.

Court Assistant : Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU