



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 42 OF 2019

EVERLYNE WEKESA.....1ST PLAINTIFF

WHITNEY FARIDA WAFULA

(Suing through her mother and next friend EVERLYNE WEKESA.....2ND PLAINTIFF

PETER PRESTON WAFULA

(Suing through her mother and next friend EVERLYNE WEKESA.....3RD PLAINTIFF

VERSUS

TIMOTHY WAFULA SIMIYU.....DEFENDANT

RULING

1. By a Notice of Motion dated **28/1/2021** and filed on **16/4/2021** brought under **Order 8 Rule 3** of the **Civil Procedure Rules**, the plaintiffs seek leave be granted to amend the plaint in terms of the draft amended plaint annexed hereto and costs of this application be in the cause.
2. The application is supported by the affidavit of **Everlyne Wekesa** sworn on **28/1/2021**. The application is premised on the grounds that one of the minors the plaintiff represented has attained majority and needs be a substantive plaintiff in the suit; that some dates and description of the suit land need be corrected; that particulars of fraud need to be included; that orders of cancellation of title require to be included and that the Land Registrar Trans Nzoia is intended to be enjoined.
3. The plaintiffs filed further and supplementary affidavits on **28/5/2021**.

The Response

4. The defendant filed a replying affidavit sworn on **6/5/2021**. His response is that the amendments proposed by the plaintiff are intended to completely change the substratum of the suit and that the plaintiff intends her children to inherit the defendant while he is still alive and that that may occasion animosity between those children and the defendant's other children.

Submissions

5. The defendant filed his written submissions on **25/5/2021**. The plaintiffs filed their written submissions on **31/5/2021**.

Determination

6. The main issue arising from the instant application is whether leave should be granted to the plaintiffs to amend the plaint.
7. Leave to amend pleadings at any time before judgment is to be granted freely as long as it does not prejudice the opposite party. In the present case the defendant has not demonstrated that the leave to amend sought would prejudice him in any manner if granted. Besides, I have perused the proposed amended plaint and in my view it does not change the substratum of the suit. Many of the objections raised by the defendant in opposition to the application for leave to amend are matters of evidence which can not be raised at the present juncture but at the hearing.

8. Consequently I find that the application dated **28/1/2021** has merit and the same is granted in terms of prayer number **(a) and (b)** thereof. The amended plaint shall be filed and served on the defendant **within 7 days** of this order failure to which the orders granted herein shall lapse. This suit shall be mentioned on the **22/7/2021** for further directions.

It's so ordered.

Dated, signed and delivered at Kitale via electronic mail on this 7th day of July, 2021.

MWANGI NJOROGE

JUDGE, ELC, KITALE.