



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC PETITION 71 OF 2017

PAUL OTIENO AKEYO

JOSEPH J. ACHOLA

MAUREICE ONYANGO ROCHO

JOSEPH OTOGO NYAGIRI

WILLIAM AKELLO SIDEDE

DOUGLAS OWALA OLAGO

ABIK ONGOTA

JOSEPH AWAMBO MATHONYE

PATRICK OKECH ORANGA

(Suing for and on behalf of themselves and for and on Behalf of the

KOGONY LAND COUNCIL OF ELDERS WELFARE).....PETITIONERS

VERSUS

KENYA AIRPORTS AUTHORITY.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

NATIONAL LAND COMMISSION.....3RD RESPONDENT

RULING

The Petitioners have come to court seeking orders that they be allowed to amend the petition on grounds that currently the National Land Commission replaced the Commissioner of Lands. The applicants/petitioners at the time when filing his suit did not include the 507 acres of land that had also been acquired. It is imperative for an amendment of the pleadings to include the said acres of land. Since the inception of the suit some of the representatives have passed on hence the need to add more representatives.

In the supporting affidavit, it is stated that at the time of filing the pleadings they had not included the 507 acres of land that had been acquired by the Colonial Government for the expansion of the Airport in Kisumu.

That it is imperative for an order of amendment of the pleadings to be made to include the said 507 acres of land as it would be detrimental on the applicants if it were not a part of the prayers. The Respondents will not suffer any prejudice from the granting of the said orders.

Their representatives have passed on since the inception of the suit hence a need to add more representatives.

In the grounds of opposition filed by D.O Otieno advocate, he states that:

- 1) There is no explanation tendered to explain why the Petitioners failed to bring their entire claim with this petition as originally

filed. There is therefore no basis for inviting the court to exercise its discretion in favour of the Petitioners.

2) There is not a single piece of the evidence to support the request for the proposed amendment. The amendment is conjectural and is only made because there is a provision in law for the amendment of pleadings while overlooking the cost element of introducing a substantial variation to their case to the 1st Respondent.

3) It is on record that the Petitioners have always wanted to proceed with the hearing of this matter. The claim for the additional 502 acres sought to be introduced vide the amendment is an abuse of the court process as the Petitioners seem to want to use the court process as a lottery.

4) The parties had agreed by consent that the dispute herein be resolved through an investigation by the 3rd Respondent. The 3rd Respondent has substantially carried out the investigation within the parameters of the petitioners' case as originally presented. Any attempt to expand the scope of the petitioners' case will unduly interfere with that process and would be inimical to the overriding objective, the Rules as well as article 159 of the Constitution.

I have considered the application and I do find that there is no necessity for removal of the Commissioner of Lands and substitution with to National Land Commission as the National Land Commission Act provides for the security of the claims of lands.

The saving provisions in Section 30(b) of the National Land Act provides as follows:-

Notwithstanding the provisions of this Act—

(b) any function or transaction, civil proceedings or any other legal or other process in respect of any matter carried out in relation to the administration of public land administration, by or on behalf of the Ministry of Lands before the commencement of this Act, shall be deemed to have been carried out under this Act.

The parties being added in the petition have not sworn any affidavit to declare their interest. Their particulars have not been disclosed. Moreover this representative suit and therefore adding more parties is superfluous and meant to delay the hearing of the case. I do find that the application is not merited. The same is dismissed with costs. Orders accordingly.

DATED AND DELIVERED THIS 28th DAY OF FEBRUARY, 2020.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

In the presence of:

M/S KEMBOI FOR QIEU FOR APPLICANTS

N/A FOR RESPONDENTS

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE