



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

CIVIL CASE NO. 325 OF 2017

SML (suing by his next friend JKM.....PLAINTIFF

VERSUS

MMM.....1ST DEFENDANT

LAND REGISTRAR, MAUA LAND REGISTRY.....2ND DEFENDANT

TKM.....3RD DEFENDANT

EMM.....4TH DEFENDANT

CMM (sued as the legal representative

of the estate of the late EMM).....5TH DEFENDANT

RULING

1. The plaintiff herein instituted this suit on 19/2/2017 in her capacity as the next friend of **SML** appointed in **Nrb Family Division Misc Application No. 106 of 2017 In the matter of the Mental Health Act Cap 248 Laws of Kenya**. The matter relates to the management of the properties of **SML** of which, the plaintiff contends that the properties were fraudulently and illegally transferred without the authority of **SML**, without her authority as an appointed guardian, and without the leave of the court. On account of the age of the 3rd Defendant, her evidence was taken way back on 29.7.2019 and she was duly cross-examined.

2. On 22.1.2020, the plaintiff's advocate sought to amend the plaint so as to add other properties not included in the initial plaint i.e. **Njia Cia Mwenda/[...], [...]** and **Njia/ Burieruri/[...]** and **Njia Cia Mwendwa/ [...]**. It was averred that the properties would only adversely affect the 3rd 4th and 5th Defendant. Mr Thangicia for the 3rd and 5th Defendant was concerned that the aforesaid amendments will take considerable time and the court should have regard of the age of his client and the fact that she has already testified.

3. This matter has been fixed for further hearing on 20/5/2020.

4. The main issue for determination in this Ruling is whether or not the plaintiff should be allowed to amend its plaint. Justice J. B. Havelock in the case of **Daniel Ngetich & Anor V K-Rep Bank Limited [2013] Eklr** stated that:

“...Normally the court should be liberal in granting leave to amend a pleading. But it must never grant leave for amendment if the court is of the opinion that the amendment would cause injustice or irreparable loss to the other side or if it is a device to abuse the process of the court. The power to allow amendments is intended to do justice; for, all amendments ought to be allowed which (a) do not work injustice to the other side, and (b) are necessary for the purpose of determining the real question in controversy between the parties; and all the authorities lay down precisely the same doctrine, that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. The court must aim at seeing that a multiplicity of suits is avoided, the real matters in controversy between the parties are clearly brought out, the other party is not prejudiced, the character of the suit or defence is not altered, and the object of the amendment is not to abuse the process of the court or unnecessarily delay justice or work a clear injustice”.

5. I had earlier introduced in this Ruling that the main issue in dispute revolves around the management of the properties of **SML**. I have taken into consideration that 3rd Defendant has testified. I take note that the 3rd Defendant may not have the opportunity to testify on the three properties if included at this stage. However, the said party can be recalled if need be to give her input in respect of the additional properties.

6. I find that the proposed amendment will enable the court to determine the real issues in dispute if all the properties belonging to SML are included in this suit. I am minded by the provisions of **Article 159 of the Constitution of Kenya** and **Section 146 of the Evidence Act**. **Section 146 (4) of the Evidence Act** provides that:

“The court may in all cases permit a witness to be recalled either for further examination in chief or for further cross examination, and if it does so, the parties have the right of further cross – examination and re – examination respectively.”

7. I therefore find it fit to make the following Orders;

1) The plaintiff be and is hereby granted leave to amend and serve his further amended plaint within 14 days from the date of this Ruling. The said amendment shall be limited to the inclusion of the following Parcels of land; Njia Cia Mwendwa[...], Njia Burieruri/[...] and Njia Cia Mwendwa/[...] only.

2) The Defendants are hereby granted leave to file their Defence within 14 days upon Service of the amended plaint.

3) TKM, the 3rd defendant is at liberty to give further evidence touching on the 3 additional properties.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 19TH FEBRUARY, 2020

IN THE PRESENCE OF:-

C/A: Kananu

Ndung’u for plaintiff

Thangicia for 3rd & 5th defendant

Holding brief for Kinyua for 4th defendant

Ms. Soi holding brief for Gikonyo for 1st defendants

HON. LUCY. N. MBUGUA

ELC JUDGE