



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO.67 OF 2008

PRESBYTERIAN FOUNDATION.....PLAINTIFF

VERSUS

CHARLES NDUNGU.....DEFENDANT

AND

MARGARET WANJIKU WARIUKI

GRACE WAHITO NGARI

OBADIAH KAIRI MAINA

(suing as officials being Session Clerk, Session

Treasurer and Finance Chairman respectively of

P.C.E.A DR. ARTHUR PARISH.....INTERESTED PARTY

RULING

(Application for amendment of plaint; application allowed save that interested party be enjoined as co-plaintiff given the changed circumstances of the case)

1. The application before me is that dated 6 September 2017 filed by the plaintiff. It seeks leave to amend the plaint.
2. The original suit was filed on 28 April 2008 by The Presbyterian Foundation against Charles Ndungu Waithaka. It was the contention of the plaintiff that it is the owner of the land LR No. 14242/2 which is land measuring 18.82 Ha, having purchased it in a public auction, and that the defendant had unlawfully taken possession of 7 acres of the said land. In the case, the plaintiff sought to be declared the owner of the whole land and for eviction of the defendant. The defendant filed defence vide which he contended that the purchase of the land was done jointly between himself and the plaintiff and that he was entitled to 7 acres of the land which comprised of his contribution. In the course of the case, the parties entered into a consent on 20 April 2011, vide which they agreed that the defendant is entitled to 5 acres of the suit land. Aggrieved by the consent, the Dr. Arthur PCEA Parish, through the law firm of M/s Njuguna Matiri & Company Advocates (now Matiri, Mburu & Chepkemboi Advocates) , applied to be enjoined into these proceedings as interested party and to set aside the consent entered between the plaintiff and defendant. The Parish explained that the money used to purchase the land came from it, and that the plaintiff, an entity of the same church, was holding the land in trust for it. It did not recognize the alleged contribution of the defendant and contended that the consent was a breach of trust. The application to have the Parish come in as interested party and to set aside the consent was allowed. Later, the law firm of M/s Matiri, Mburu & Chepkemboi Advocates, took over the matter from the law firm of M/s Waruhiu, K'Owade & Nganga hitherto acting for the plaintiff, and are now acting for both plaintiff and interested party.
3. Through this application, the plaintiff has applied to amend the plaint so as to plead inter alia that they became registered as owners as trustees of the interested party. The other aspects of the claim are more or less what is contained in the original plaint.
4. I have considered the application which is not opposed. I also have no problem with it. However, I believe that given that the plaintiff and the interested party are now talking the same language, and appear to be in agreement on the manner in which the case should be prosecuted, it is more appropriate for the Dr. Arthur Parish to be enjoined as co-plaintiff rather than remain in this suit as interested party. They indeed appear to be the most aggrieved in the matter and seem to be the party that will present the most critical witnesses in the case.

5. I therefore direct that in the amended plaint, Dr. Arthur Parish be enjoined in the suit as co-plaintiff and their designation as interested party to change. The body of the plaint ought to be amended so as to reflect this position. Save for the above directions, the plaintiff may amend the plaint to put forth what it considers to be the proper cause of action. The Amended plaint be filed and served in 14 days.

6. I make no orders as to costs.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 7th day of February 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Bosire holding brief for Mr. Matiri for the plaintiff/applicant.

No appearance on the part of M/s Waiganjo & Co. Advocates for the defendant.

Court Assistant : Janepher Nelima

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU