



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**ELC CAUSE NO. 23 OF 2017**

**FORMERLY NAKURU ELC NO. 543 OF 2016**

**MOSES SANINGO NAIGURAN.....PLAINTIFF**

**-VERSUS-**

**GEOFFREY MAKANA ASANYO.....DEFENDANT**

**RULING**

The Application before me is the Plaintiff's Notice of Motion dated 13<sup>th</sup> February, 2018 seeking the stay of further proceedings in the suit, the court do include one Wangui Kimani advocate as a defendant. The application was based on the grounds as Wangui Kimani was the advocate who witnessed and drew all the documents between the parties and that she has challenged the documents that are purported to have been signed by her and that she can't be in the suit herein as a witness but a defendant.

The Applicant in a supporting affidavit that was annexed to the said application avers that the said advocate was acting for the parties herein and her conduct was highly questionable and that she had signed the transfer forms in favour of the Defendant only while she signed all the other documents were in the joint names of the plaintiff and the defendant.

The Plaintiff further avers that the fraud leading to the transfer could only be done by the defendant and the advocate acting jointly.

The Respondent had opposed the said application and had filed grounds of oppositions to same contending that the application is misconceived and the intended amendment are barred and prohibited by the limitations of actions Act chapter 22 laws of Kenya that the notice of motion itself offends the provisions of section 7 of the Civil Procedure Act and that the appellant has hitherto been granted an opportunity to a make amendments and he did not utilize the same.

I have read the application before me and the submissions made by counsel on behalf of the parties. It is trite law that parties upon application the acting suo muto can amend these pleading at any stage before the close of pleadings.

In the instant application pleadings had closed along time ago. The suit proceeded for case conference and the matter commenced for hearing in which the plaintiff testified this application was filed in such a late stage.

The applicants had known all along that Ms Wangui Kimani advocate had acted for the deceased and the defendant and the applicants had all the documents that relate to the matter here in their possession and I thus find that the instant application has been inordinately filed late and is only meant to delay the further hearing of the suit here.

Amendment to pleading are ordinarily granted to enable a court to effectually adjudicate over matters as between the parties. In the instant case and from the pleadings filed the applicant has not demonstrated what cause of action arose against Wangui Kimani advocate. The applicant questions the competence and integrity of the said advocate which in my view can be addressed in other forums such as the regulatory body charged with the responsibility to police the conduct of the advocate.

From the supporting affidavit the applicant has not demonstrated to me what claim he has against the said advocate other than witnessing documents. The threshold to prove fraud on the part of the advocate as alleged by the application is high and in the instant case those remain allegations that are unsubstantiated. In any event the applicant will have every opportunity to cross examine the said advocate and/or call her as a witness.

The upshot of the above is that I find the application dated 13<sup>th</sup> February, 2018 as unmerited and I dismiss the same with costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **4<sup>TH</sup>** day of **APRIL, 2018**

**Mohammed Noor Kullow**

**Judge**

**4/4/18**

In the presence of:

N/A for the Applicant

Mr Ochwangi for the Defendant/Respondent

**Mohamed Noor Kullow**

**Judge**

**4/4/18**