

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HCCC NO. 61 OF 2011 (O.S)

IN THE MATTER OF SECTION 17 OF THE MARRIED WOMEN'S PROPERTY ACT (1882)

J R O..... APPLICANT

VERSUS

G A O ORESPONDENT

RULING

1. The application for determination is a motion dated 16th July 2014. The applicant seeks leave to amend the Originating Summons dated 1st November 2011.
2. The grounds upon which the application is premised are set out on the face of the application and in the affidavit of the applicant, J R O, sworn on 16th July 2014.
3. She avers that at the time she filed the Originating Summons she sought declarations with respect to a property she described as No. *[particulars withheld]* on Ndorobo Road, Lang'ata, Nairobi. She did not have proper details of the property at the material time, but she has since established that the same is registered as LR No. *[particulars withheld]*, Ndorobo Road. She would like the pleadings amended to provide those details.
4. Upon being served, the respondent filed the grounds of opposition on record dated 16th September 2014. It is argued that the application is founded on a statute that does not apply to the suit as currently instituted, it is an afterthought for it is filed two years after the marriage between the parties was dissolved and it is intended to introduce new property.
5. In addition, the respondent filed a list of authorities dated 17th September 2014, complete with copies of the decisions in issue.
6. The application was canvassed orally on 9th October 2014 by Ms. Thongori for the applicant and Ms. Guserwa for the respondent. Both addressed me at length on the facts of the case. Ms. Thongori submitted that the respondent would not be prejudiced by the intended amendment. Ms. Guserwa countered that by stating that the respondent would be prejudiced for the proposed amendment would introduce a fresh cause of action founded on new property.
7. The pleading lodged in court on 2nd November 2011 refers to a property described variously as a parcel of land and house Number *[particulars withheld]* on Ndorobo Road, Lang'ata. The amendment proposes to change the description to read LR No. *[particulars withheld]* Ndorobo Road, Nairobi. To my mind the amendment proposed does not introduce a new cause of action nor a new asset. It still refers to the property along Ndorobo Road, Nairobi.
8. I am not convinced that the respondent will be prejudiced in any manner by the proposed amendment and I cannot find any good reason for disallowing the application dated 16th July 2014.
9. In the result, I do hereby allow the application dated 16th July 2014 in the terms proposed, save that the respondent shall bear the costs of the application.

DATED, SIGNED and DELIVERED at NAIROBI this 3RD DAY OF JULY, 2015.

W. MUSYOKA

JUDGE

In the presence of Ms. Ng'ang'a for Mrs. Kitotolo advocate for the applicant.

In the presence of Mr. Ruri for Ms. Gusera advocate for the respondent.