



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL CASE NO. 136 OF 2007

JOHN GITHUA MUCHIRI PLAINTIFF

VERSUS

**1. KOTON WANDABE
2. RAYMOND NYERIS PLAL DEFENDANT**

RULING

1. The applicant Lucia Kibui Muchiri brought a notice of motion dated 7th January, 2014 in which she seeks leave of the court to further amend the plaint. The applicant had been granted leave to amend the plaint on 18/6/2013.
2. The applicant now seeks leave to further amend the plaint to reflect the correct Land Parcel Number. Initially the land parcel No. had been indicated as West Pokot/Siyoi/1633 but due to subdivisions the suit land is now comprised in land parcel No. West Pokot/Siyoi/2728.
3. The application is opposed by the respondents based on ground of opposition dated 4th February, 2014. The respondents contend that the application is frivolous, vexatious and an abuse of the process of court. The respondents further contend that the application is res-judicata and that the applicant seeks to introduce a new cause of action.
4. I have considered the application by the applicant as well as the objection to the same by the respondents. Mr Ngeywa for the respondent submitted that the application is time barred and cannot be granted. In response to this submission Mr Kiarie for the applicant submitted that the issue of limitation can be canvassed in the defence.
5. I am aware that amendments may be allowed at any time before judgment. I am also aware that costs where appropriate can be granted to a respondent in an application for amendment. The court should also consider what prejudice if any the respondent will suffer as a result of the amendment. It should also be considered whether the said amendment is caught up by limitation.
6. In the present case the applicant is seeking to amend the plaint to bring in a cause of action which arose around 1989 in Kitale Senior Resident Magistrate Civil Case No. 267 of 1989 between Kuton Wandabe and John Githua.
7. John Githua is the late husband of the plaintiff herein who came into this suit after the death of her husband. A consent was recorded on 18/6/1992 in which the plaintiff named in the case in paragraph 6 hereinabove agreed to transfer 3½ acres to the defendant in return for the defendant removing a caution he had lodged on title No. West Pokot/Siyoi/28.
8. John Githua relocated from West Pokot in 1993 before he could enforce the orders arising from the consent. The first respondent who was the plaintiff in Kitale SRMCC 267 of 1989 had, LR No. West Pokot/Siyoi/28 subdivided into several parcels. He sold one of the subdivided parcels to the 2nd defendant/respondent herein.
9. The plaintiff is now seeking to amend the plaint to bring in parcel No. West Pokot/Siyoi/2728 which is in the name of the 2nd defendant/respondent.

10. What in essence the applicant is seeking to do is to enforce the consent order of 18/6/1992 which granted her husband 3½ acres. The suit herein was filed 15 years after the said consent. The amendment is sought 22 years later. The amendment is targeted at the portion held by the 2nd defendant who had no privity of contract with the plaintiff. The amendment is not only time barred but will greatly prejudice the 2nd defendant/respondent. No amount of costs can compensate the 2nd defendant.
11. I find that the amendment is sought after lapse of a long period. It will not be fair to allow it. The application is dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale don this 13th day of March, 2014.

E. OBAGA,

JUDGE

In the presence of Mr Kiarie for plaintiff and M/S Arunga for Mr Ngeywa for the defendants. Court Clerk – Kassachoon.

E. OBAGA,

JUDGE

13/3/2014