



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 145 OF 2016

JACKSON KIPRUTO NGETICH.....PLAINTIFF

VERSUS

JAMES NYAMONGO.....1ST DEFENDANT

ISHMAEL MACHIVA.....2ND DEFENDANT

JAMES MISOL.....3RD DEFENDANT

JULIUS KORIR.....4TH DEFENDANT

SIMEON MOBEGI.....5TH DEFENDANT

FRANCIS OMWERI.....6TH DEFENDANT

OMWOYO FRED.....7TH DEFENDANT

MICHAEL KIGEN.....8TH DEFENDANT

FRANCIS KIPKOECH CHEPKONGA.....9TH DEFENDANT

BENJAMIN OINO.....10TH DEFENDANT

HELLEN KERARIO.....11TH DEFENDANT

CLEDY LIMO CHEMBEI.....12TH DEFENDANT

KITIABI BENSON.....13TH DEFENDANT

RULING

[NOTICE OF MOTION DATED 23RD JULY, 2019]

1. The Plaintiff moved the Court through the Notice of Motion dated the 23rd July, 2019 seeking for leave to further amend the Plaint to add nine (9) parties as 2nd to 10th Plaintiffs, and two others as 14th and 15th Defendants. The application is based on the eight (8) grounds on its face and supported by the affidavits of the Plaintiff sworn on the 22nd July 2019 and 26th March, 2020. It is the Plaintiff's case that nine of the parties he intends to enjoin as Plaintiffs are the registered owners of *Uasin Gishu/Kimumu/4706 to 4714 and 6374 to 6374*, which were subdivided from *Uasin Gishu/Kimumu/93*. That the other two intended Defendants are government offices and will help the Court determine the issues on the subdivision of the parent title. That enjoining the new parties will enable the Court to fully adjudicate the matter to finality.

2. The application is opposed by **Francis C. Kipkech**, the 9th Defendant on behalf of himself, 3rd, 8th and 12th Defendants, through the replying affidavit sworn on the 12th September, 2019. It is their case that they bought the suit lands in 2005 and have since made permanent development on their respective parcels without any interruptions, until 2016 when the Plaintiff sued them. That the Plaintiff and those he sold land to had been sued in **Eldoret ELC No. 218 of 2015** by **Irene Gathoni Njenga** but efforts to consolidate that suit and the current suit

did not succeed. That the Defendants are bona fide purchasers even though they are yet to get individual titles for their portions.

3. That **Alfred King'ona Nyairo**, the 3rd Defendant in the counterclaim, also opposed the application through his replying affidavits sworn on the 11th October, 2019 and 23rd March, 2020. It is his case that the application is incompetent, defective, bad in law and should be struck out with costs. That those sought to be enjoined have not sworn any affidavits supporting the application. That there is no evidence availed to show that the intended 2nd to 10th Plaintiffs have any interests in the subject matter of the suit and should therefore not be enjoined. The Plaintiff has not explained why he seeks the amendment of the Plaint to add parties more than two years after filing the suit. That the attached draft further Amended Plaint does not conform with **Order 8 Rule 7 of the Civil Procedure Rules, 2010**, as the same draft had been filed without leave, and expunged on the 7th May, 2019 for it would have changed the character of the suit. That the amendment sought is likely to defeat his defence of limitation, hence prejudicing his case.

4. That the 1st, 2nd, 4th, 5th, 6th, 7th, 11th and 13th Defendants in the main suit and 2nd and 4th Defendants in the counterclaim opposed the application through the grounds of opposition dated the 23rd March, 2020 summarized as follows;

(a) That the application is fatally defective, lacks merit and should be dismissed.

*(b) That the attached draft amended plaint contravenes **Order 8 Rule 7 of the Civil Procedure Rules, 2010**, and the amendments therein will completely change the character of the suit and defeat the defence already filed.*

(c) That the parties sought to be enjoined are not necessary for the effectual and conclusive determination of the issues herein.

(d) That no explanation has been availed as to the delay in bringing the application.

5. The Court gave directions on the 9th March, 2020 on filing and exchanging written submissions. That thereafter, M/s Angu Kitigin & Company Advocates for the Plaintiff and M/s R. M. Mutiso & Company Advocates for 1st, 2nd, 4th, 5th, 6th, 7th, 11th and 13th Defendants in the main suit and 2nd and 4th Defendants in the counterclaim, filed their written submissions dated the 27th March, 2020 and 20th May, 2020 respectively.

6. The following are the issues for the Court's determinations;

(a) Whether the parties sought to be enjoined in the suit through amendment are necessary for the effectual and complete determination of the issues in the suit.

(b) Whether the intended amendment will prejudice any of the parties in a way that cannot be compensated with costs.

(c) Who pays the costs of the application?

7. The Court has carefully considered the grounds on the Motion, the affidavit evidence filed, the grounds of opposition, the written submissions, superior court's decisions cited therein and come to the following findings;

(a) That these proceedings were commenced by Jackson Kipruto Ngetich, the Plaintiff, against James Nyamongo, Ishmael Machiva, James Misoi, Julius Korir, Simeon Mobegi, Francis Omweri, Omwoyo Fred, Michael Kigen, Francis Kipkoech Chepkonga, Benjamin Oino, Hellen Kerario, Cledy Limo Chembei and Kitiabi Benson, the 1st to 13th Defendants respectively, through the Plaint dated 25th May, 2016, seeking for their eviction and that of their agents from Uasin Gishu/Kimumu/93, permanent injunction and costs. The Defendants filed their statements of defence including the 3rd, 8th, 9th and 12th Defendants, whose defence dated 5th July, 2016 has a counterclaim against Jackson Kipruto Ngetich, Alfred Momanyi Nyairo, Alfred King'oina Nyairo (T/a Nyairo & Company Advocates), Lilian C. Lagat alias Lilian Jepkoech Lagat. They seek among others for declaration that the Defendants in the counterclaim sold to them portions of Uasin Gishu/Kimumu/93 and costs.

(b) That an Amended Plaint dated 1st March, 2018 was filed on the 6th March, 2018 among others introducing paragraphs 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 8B, 8C between paragraphs 7 and 8. That a further Amended Plaint was filed on the 19th November, 2018, but expunged on the 7th May, 2019, and Plaintiff directed to make a formal application. That subsequently, the motion subject matter of this ruling was filed.

(c) That from the foregoing, the Amended Plaint filed on the 6th March, 2018 and dated the 1st March, 2018 has not been challenged. That indeed, the 10th Defendant, 3rd, 8th, 9th and 12th Defendants filed their amended defence statements dated 8th March, 2018 and 10th April, 2018 respectively. That other than the introduction of the 2nd to 9th Plaintiffs and 14th and 15th Defendants, the other main change sought to be introduced through the proposed amendment is the addition of **"subsequently subdivided into land parcel numbers 4706 to 4714 and 6373 and 6374"** after **"Uasin Gishu/Kimumu/93"**. That the prayers sought have remained the same and as the Defendants will have the opportunity to file and serve their amended statements of defence if the application is allowed, the Court finds no party stands to be prejudiced in a way that cannot be taken care of through an award of costs.

(d) That it is apparent that the Plaintiff/Applicant was aware about the subdivisions of Uasin Gishu/Kimumu/93 into the various parcels and the existence of the 2nd to 10th Plaintiffs as far back as 1st March, 2018 when he had drawn the Amended Plaint filed on the 6th March, 2018. That it is however, unclear why he did not enjoin the said Plaintiffs at that stage. That accordingly, the Court is

of the view that the Plaintiff should meet the costs of the application notwithstanding being successful.

8. That flowing from the foregoing, the Court finds merit in the motion dated the 23rd July, 2019 and is allowed in the following terms;

(a) That the Plaintiff [**Jackson Kipruto Ngetich**] is hereby granted leave to further amend the Amended Plaintiff to enjoin the proposed nine (9) Plaintiffs and two (2) Defendants.

(b) That the Further Amended Plaintiff be filed and served in twenty-one (21) days.

(c) That the Plaintiff to pay the Defendants who participated in the application costs of the same.

Orders accordingly.

Delivered virtually and dated at Eldoret this 21st day of October, 2020.

S. M. KIBUNJA

JUDGE

In the presence of:

Plaintiff: Absent.

Defendants: Absent.

Counsel: M/s Odwa for Mutiso for 1st, 2nd, 4th, 5th, 6th, 7th, 11th and 13th Defendants and 2nd to 4th Defendants in the Counterclaim and Mr. Kiptarus for 3rd, 8th, 9th and 12th Defendants.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.