

REPUBLIC OF KENYA

High Court at Bungoma

Environmental & Land Case 69B of 2012

BENJAMIN WAFULA BARASA PLAINTIFF

VERSUS

JOSEPH NYONGESA BUYELA

ALFRED JUMA MASINDE

PHAUSTINE WAFULA MASINDE

WINSTON G JONDI DEFENDANTS

RULING

The 6th Respondent has raised a preliminary objection stating the applicant has not obtained leave to join the 6th respondent as a party to the suit. The 4th respondent through his counsel Mr. Onyando also objected as no leave of the court was obtained to amend the originating summons filed in court on 8th September 2012.

The applicant filed the O.S. on 11th February 2008. The first respondent filed a replying affidavit on 13th March 2008. A memorandum of appearance for all the respondents were filed by the firm of Okile & Co. advocates on 22nd February 2008. Subsequent to these pleadings, the applicant has filed several applications within the suit and replies made to those applications by the respondents through their advocates on record. The pleadings had therefore been closed long ago and any party seeking amendment is bound by the provisions of order 8 (3) & (4) of the Civil Procedure Rules.

Under Order 8, parties are required to seek leave the court when pleadings had closed before joining or amending so as to have order in the manner in which cases proceed in court. Article 159 of the Constitution merely discourages suits from being dismissed on technicalities on want of form. If the applicant wishes to add parties to his suit let him follow the laid down procedures. I do find the preliminary objection is merited and therefore order the amended O.S filed in court on 18th September 2012 and dated 13th September 2012 be struck out. I make no order as to costs.

RULING DATED, SIGNED, READ and DELIVERED in open court this 11th day of APRIL 2013.

A. OMOLLO

JUDGE.