



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 17 OF 2014

RICHARD TOROITICH.....PLAINTIFF

VERSUS

- 1. MIKE L. LELMET**
- 2. ELISHEBA C. LELMET**
- 3. PAULINE J. LELMET**
- 4. ESTHER J. LELMET (Suing as administrators of
the Estate of WILLIAM CHERUIYOT LELMET)**
- 5. NICHOLAS LELMET.....DEFENDANTS**

RULING

1. The hearing of this suit commenced on **1/2/2018** when **PW1** testified for the first time in the matter. The hearing has been punctuated by numerous objections and rulings thereon. The last substantive hearing took place on **25/9/2019** and **PW1** was still on the stand as at that date, his evidence having been interrupted by the numerous objections and rulings herein. On **25/9/2019** the court scheduled the matter for further hearing on **21/1/2020** and on the same date Ms. Kibe, counsel for the plaintiff applied for leave to file a certified extract of title or copy of records. Prof. Sifuna and Mr. Teti, both for the defendants' side did not voice any objection but instead applied for orders that they be supplied with the copies of the said documents by Ms. Kibe before the next hearing date; the court therefore granted leave as sought with the caveat that the plaintiff would file and serve the documents needed within 30 days.

2. Come **21/1/2020** Ms. Kibe informed the court that the main land parcel had been subdivided and therefore she could not obtain the parcel file thereof, which problem was also partly attributed to digitization at the lands office. She also indicated that other titles had been issued and that other proceedings existed in Eldoret Environment and Land Court over titles emanating from the subdivision of the main land parcel involved herein. Ms. Kibe alluded to a judgment in **Kitale High Court Succession Cause No. 137 of 2010** in which the estate of the now deceased vendor was in the process of being distributed and submitted that the defendants' actions regarding the suit land may render this suit an academic exercise. She further stated that she was not sure whether her client's land can still be referred to by the same number it was known before and prayed for an adjournment on those grounds which application this court allowed.

3. On **27/2/2020** during a mention of the matter Ms. Kibe indicated she had filed further documents in the matter and that amendments to the plaint were needed to include new parties. The court ordered that the application to amend and include new parties and documents be filed and served within 14 days, hence the instant application.

4. The instant application is a Notice of Motion dated **12/3/2020** and filed in court on **17/3/2020**. The application is supported by the affidavit of the plaintiff sworn on **12/3/2020**. It is brought under **Order 1 Rules 3, 10 and 25, Order 8 Rule 3 and 5, Order 51 Rule 1** of the **Civil Procedure Rules** and **Sections 1A and 1B** of the **Civil Procedure Act**. The plaintiff seeks the following orders:

(1) That the Land Registrar Trans-Nzoia County and the Honourable the Attorney General be joined in this suit as the 6th and 7th defendants.

(2) That the plaintiff be granted leave to re-amend the further amended plaint filed herein in the manner shown in the draft further re-emended plaint attached to the affidavit in support of this application and the same be deemed as properly filed once paid for.

(3) That the plaintiff be granted leave to file a further list of documents and further witness statements or as shall be ordered.

(4) That costs of this application be provided for.

5. The grounds upon which the application is based on are that the land has been subdivided by the Trans Nzoia County Land Registrar in collusion with 1st - 4th defendants and new freehold title under **Cap 300** have issued to the subdivisions and that as a consequence of foregoing the Honourable the Attorney General and the Land Registrar, Trans-Nzoia County have become necessary parties and ought to be enjoined in this suit. Also, there arose the need to amend the plaint to enable the above matters to be brought formally before the court and to enable the court deal with all issues in dispute in the suit; this according to the applicant, would enable a just conclusion and give effect to any orders that may issue in respect of the suit land in this matter.

6. The 1st, 2nd, 3rd and 4th defendants filed joint grounds of opposition dated **27/3/2020**. The gist of those grounds is that the application is an abuse of the court process and in aid of a time-barred suit; that the plaintiff has misled the court into misinterpreting the Court of Appeal decision; that the plaintiff lacks *locus* to sustain a claim against the Attorney General as he has never acquired title to the land and joinder of the Attorney General will amount to a misjoinder of parties and that the intended amendments will be in violation of the terms of the Judgment in **Kitale High Court Succession Cause No. 130 of 2010**. The court ordered that the instant application would proceed on the basis of the documents on record and no submissions were filed by the parties.

7. The issues that arise in the instant application are as follows:

1. Should leave be granted to enjoin the County Land Registrar and the Attorney General as 6th and 7th defendants in this suit?

2. Should leave be granted for the amendment of the plaint as sought and should leave be granted to the plaintiff to file a further list of documents and statements?

3. What orders should issue

1. Should leave be granted to enjoin the County Land Registrar and the Attorney General as 6th and 7th defendants in this suit?

8. Regarding joinder of the two more parties proposed, this court only needs to refer to the introduction to this ruling in **paragraph 1** above and state that sufficient ground has been laid in this application and in the prior proceedings to warrant the court to issue an order of joinder of those intended parties. I therefore find that in exercise of its power under **Order 1 rule 10 of Civil Procedure Rules** prayer **No. (1)** of the application should be granted.

2. Should leave be granted for the amendment of the plaint as sought and should leave be granted to the plaintiff to file a further list of documents and statements?

9. Regarding whether the plaint should be re-amended, it is clear that the joinder of the new two parties will require pleadings and prayers to be raised against them in the plaint to enable the court and other parties understand in full the case against them and also to enable the plaintiff secure any orders that he may wish to obtain against them. This court has noted that the relevant pleadings have been included against in those new parties in **paragraphs 25, 26, 27, 28 and 29** of the draft further amended plaint which form part of the basis for the prayer for cancellation of title at the foot of the same plaint, which cancellation would be effected by the new parties if this court ordered it. The granting of these orders would necessarily require that the plaintiff who has not yet closed his case be allowed to file fresh documents that will shed light on the new matters arising especially the actions of the 6th and 7th defendants. For those reasons I find that prayer **No. (2)** of the application is merited.

3. What Orders should issue?

10. Consequently, I find that the application dated **12/3/2020** has merit and I grant it in terms of Prayers **Nos. (1), (2) and (3)** thereof. The plaintiff shall file and serve his amended plaint and further list and bundle of documents within **14 days** of the date of this order. This matter shall be mentioned on **29/10/2020** for further orders.

Dated, signed and delivered at Kitale via electronic mail on this 15th day of October, 2020.

MWANGI NJOROGE

JUDGE, ELC, KITALE.