



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**ELC CAUSE NO. 80 OF 2017**

**FORMERLY NAKURU ELC CAUSE NO. 258 OF 2014**

**KARINO OLE KORIATA.....PLAINTIFF**

**-VERSUS-**

**STEPHEN KAITET KORIATA.....1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR NAROK.....2<sup>ND</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**RULING**

By a Notice of Motion dated 28<sup>th</sup> January, 2020 the Applicant sought for orders to strike out the plaintiff's amended plaint dated 30<sup>th</sup> September, 2019 since the same offended the provisions of order 8 Rule 7(2) (3) of the Civil Procedure Rules and the alternative to disallow the said amendments. The application is based on the grounds that the provisions of order 8 Rule 7(2) (3) of the Civil Procedure Rules are mandatory in that the envisaged amendments shall be shown by striking out in red ink all the deleted words but in such a manner as to leave them legible and by underlining in Red all added words and further that other colours other than red shall be used for further amendment on the said documents. The applicant also contends that whereas the initial plaint was dated 12<sup>th</sup> September, 2014 the same is not included in the amended plaint and in view of the above the 1<sup>st</sup> Defendant states that he is unable to know what was deleted and what was introduced in the amendments. The application was further supported by the 1<sup>st</sup> defendant's affidavit in which he deposes that the grounds set out in support of the application makes the respondent to circumvent the provisions of law as relates to the manner in which amendment ought to be made in a plaint.

The application was opposed by the plaintiff/respondent by way of a replying affidavit sworn on 27<sup>th</sup> February, 2020. The respondent stated that the amendments were duly underlined and deleted as appropriate.

The respondent further contends that pursuant to the provisions of Article 159 (d) of the Constitution of Kenya 2010 justice ought to be dispensed without undue technicalities and that the 1<sup>st</sup> Defendant/Applicant will not suffer any prejudice as a result of the irregularities in the pleadings.

When the application came up for hearing the court had directed that the application be disposed off by way of written submissions and despite the same the applicant had not filed any submissions. The respondent had filed submissions.

I have considered the application before me and the submissions filed by respondent and the issue for determination before me is whether the plaintiff/respondent amended plaint dated 30<sup>th</sup> September, 2019 offends the provisions of order 8 Rule 7(2) (3) of the Civil Procedure Rules and if so whether the same ought to be struck out.

In determining the above issue order 8 Rule 7 sets out the manner of making an amendment as hereunder.

7(2) All amendments shall be shown by striking out in red ink all deleted words, but in such a manner as to make them legible, and by underlining in red ink all added words.

(3) colours other than red shall be used for further amendments.

The applicants in the instant application contends that the amended plaint dated 30<sup>th</sup> September, 2019 does confirm to the above provisions and hence the same ought to be struck out. The respondent on his part states that the amendments are underlined though not in red ink.

In his submissions the respondent had invited the court to look at the substantive justice and not to be persuaded to strike out the amended plaint on procedural technicalities but ensure adherence to the provisions of Articles 159(d) of the Constitution of Kenya 2010. The applicant on his part contends that the amendments as done make the 1<sup>st</sup> defendant not to be able to know what was amended and what was struck out.

I have considered the provisions of order 8 Rule 7 of the Civil Procedure Rule with regard to mode in which the amendment must be made. It is clear that they are stated in mandatory terms. I have also seen the amended plaint in which the amendments are underlined in black and not read as envisaged under order 8 Rule 7 of the Civil Procedure Rule. However, am persuaded that this may be an oversight on the part of the respondent and the instant application shall amount to placing hurdles in front of the respondent to have his day in court. Article 159(d) of the Constitution of Kenya 2010 provides that Justice shall be administered without undue regard to procedural technicalities and since the instant suit relates to a dispute in land which is highly emotive striking out the plaintiff amended plaint on the basis of no adherence to the provisions of order 8 Rule 7 of the Civil Procedure Rules will offend the Spirit of Article 159(d) of the Constitution of Kenya 2010.

In the case of **SALAMA BEACH HOTEL LTD & 2 OTHERS-VERSUS-KENYARIRI AND ASSOCIATES ADVOCATES (2016)** eKLR Chitembwe J. held that:

**“parties should not make it difficult for their adversaries to be heard in court, it is quite prudent to let disputes be determined on merits as opposed to having pleadings struck out on technicalities which does not solve the problem”.**

In the instant application, if the court was to strike out the amended plaint then that will mean shutting the door on the plaintiff which may cause gross miscarriage of justice.

In view of the above, I find that in the spirit of Article 159(d) of the Constitution of Kenya 2010 the Notice of Motion dated 28/1/2020 is not merited and I decline the same.

On the issue of costs, I direct that each party to bear its own costs.

On the amendment which are underlined in black ink I direct the plaintiff to appropriately make the amendments within 14 days of the ruling and to have the same served on the defendants.

Orders accordingly.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **2<sup>nd</sup>** day of **October, 2020**

**Mohammed Kullow**

**Judge**

**2/10/2020**

in the presence of:

CA:Chuma

Mr Kamwaro for the plaintiff/respondent

N/A for the defendant/applicant