

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO.88 OF 2008

RODAH TERIKI CHEPTOGOCH PLAINTIFF/APPLICANT

VERSUS

KIPROP KIPSANG CHESEREM ... DEFENDANT/RESPONDENT

RULING

The application dated 27/09/2011 is made under provisions of **Section 3A Civil Procedure Act, Order 51 Rule 1** and **Order 8 Rule 3 Civil Procedure Rules** seeking that plaintiff be granted leave to amend her claim in the plaint dated 9th May 2008 and the draft annexed defence be deemed as properly filed and served.

It is based on grounds that it is absolutely necessary to amend the pleadings so as to properly and effectively enable the court to adjudicate the real issues in controversy.

The intended defendants are said to be necessary parties so as to give effect to the court's orders and no prejudice will be suffered by the defendant by such an amendment.

There was no response to this application. The supporting affidavit explains that the applicant filed this suit seeking a declaration that she is the rightful owner of the parcel in question, and also seeking for cancellation of the certificate of lease issued in the defendant's name. The Commissioner of Lands is the one who allocated the parcel in question and the District Lands Registrar Baringo registered the certificate of lease – this is what makes it necessary to join them in the suit.

I note that pleadings had closed, so it is necessary that the leave of the court be obtained before amended pleadings can be filed. The explanation given for the seeking amendment is in my view rational and merited. I therefore:

1. Grant leave to the plaintiff/applicant to amend the plaint
2. The draft annexed amended plaint shall be deemed as properly filed and served, upon payment of the requisite court fees.
3. The defendant/respondent is at liberty to file and serve an amended statement of defence if need be, within 14 days from today.
4. Costs shall be in the cause.

Delivered and dated this 1st day of November, 2012 at Nakuru.

H.A. OMONDI

JUDGE

Mr. Tumbe holding Orina for Applicant

N/A for defendant/respondent