



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 375 OF 2017

PRISCILLA JEBET BIWOTT

[Suing as the Administratrix of the Estate of

DORCAS KIPROTICH [DECEASED].....1ST PLAINTIFF

EDITH JEMATIA BIWOTT.....2ND PLAINTIFF

JANE EGO [Suing as the Administratrix of the Estate of

EGO KEBENEI [DECEASED].....3RD PLAINTIFF

DAVID KIPKOECH KOMEN.....4TH PLAINTIFF

ANDREW KIPTARUS KENEL.....5TH PLAINTIFF

JAMES KIPRONO KIMETO.....6TH PLAINTIFF

VERSUS

JACOB KIMETTO.....1ST DEFENDANT

EZEKIEL KOMEN.....2ND DEFENDANT

MUSA CHESANG.....3RD DEFENDANT

JOHN KOITIE.....4TH DEFENDANT

GEOFFREY KITUR.....5TH DEFENDANT

WILLIAM CHEMWENO.....6TH DEFENDANT

UASIN GISHU COUNTY LAND REGISTRAR.....7TH DEFENDANT

ATTORNEY GENERAL.....8TH DEFENDANT

RULING

[NOTICE OF MOTION DATED 20TH NOVEMBER, 2019 AND FILED ON 19TH DECEMBER, 2019]

1. The Plaintiff seeks for leave to amend the Plaintiff in terms of the draft attached to the Motion dated the 20th November, 2019, and filed on the 19th December, 2019. The application is based on the two (2) grounds on its face to the effect that the amendment sought will enable the Court determine the real issues in controversy between the parties, and that no prejudice will be occasioned upon the defendants. The Motion is supported by the affidavit sworn by **James Kiprono Kimetto**, the 6th Plaintiff, on the 20th November, 2019. It is the Plaintiff's case that the amendment will result to some of the Defendants being left out from the suit and retain the correct parties to the issues in dispute.

2. The application is opposed by **Ezekiel Komen**, the 2nd Defendant through his affidavit sworn on the 21st January, 2020. It is his case that the parties being sought to be enjoined are purchasers of the land and need not be drawn into the suit. That the application is oppressive, unfair and an abuse of court process.

3. That the court issued directions on 13th May, 2020 for written submissions to be filed, but only the learned Counsel for the Plaintiffs filed theirs dated 8th July, 2020. The learned Counsel for 7th and 8th Defendants informed the court on the 26th February, 2020 and 12th October, 2020 that they do not oppose the application.

4. The issues for the court's determinations are as follows;

(a) Whether the Plaintiffs have made a reasonable case for amendment of the Plaint, or alternatively whether the parties sought to be enjoined are necessary for the court to determine the issues herein with finality.

(b) Who pays the costs?

5. The Court has carefully considered the grounds on the Motion, the affidavit evidence, the learned Counsel's submissions and come to the following determinations;

(a) That from the attached draft amendments, it is apparent the proposed persons to be enjoined are registered proprietors of parcels of lands with alleged nexus to the suit lands. That it is therefore necessary to have them enjoined to the suit as the orders sought by the Plaintiffs if successful are likely to affect the said parcels.

(b) That as the hearing of the main suit is yet to commence, the Defendants who have already filed their statements of defence will be at liberty to file amended defences if the Plaintiff's application is allowed. That accordingly, the court finds no party will be prejudiced by the application being granted.

(c) That though the 2nd Defendant filed a replying affidavit in opposition to the application, the court is of the view that the costs be in the cause.

6. That in view of the foregoing, the Court finds merit in the Plaintiffs' Motion dated the 20th November, 2019, and filed on the 19th December, 2019 and orders as follows;

(a) That the Plaintiffs are granted leave to amend their Plaint as per the attached draft.

(b) The amended Plaint be filed and served upon all the Defendants in 21 days.

(c) The costs of the application be in the cause.

Orders accordingly.

Delivered virtually and dated at Eldoret this 2nd day of November, 2020.

S. M. KIBUNJA

JUDGE

In the presence of:

Plaintiffs: Absent.

Defendants: Absent.

Counsel: Mrs. Isiaho for the Plaintiff only.

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.