



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 51 OF 2017

DAVID MUDAMBO (*suing as Administrator of the Estate of*

ANDREW SAMANYA MUDAMBO (deceased).....PLAINTIFF

VERSUS

VIOLET MUSIMBI.....DEFENDANT

RULING

1. The application dated **14/8/2018** is brought by the defendant and she seeks the principal order of leave to amend the defence to include a counterclaim.
2. The application is supported by the applicant's sworn affidavit. The grounds upon which the application is made is that she is the widow of the late Andrew Samanya Mudambo and, alongside her children, a lawful beneficiary of the deceased's estate and that the proposed amendments are necessary for the conclusive determination of the issues in controversy in the suit; that she ranks first in matters of succession in that estate; that the plaintiff is her brother-in-law who has no recognizable interest in the estate and thus has no *locus standi* and that those matters require to be pleaded in an amended defence.
3. The plaintiff has filed a response titled "*responses (sic) to the notice of motion*" to that application. The gist of that document which has been filed by the plaintiff in person is that he is the administrator over the deceased's estate and that the defendant has no powers to pursue the matter in the lands court; that only the plaintiff can bring a suit or defend a suit in respect of property belonging to the estate; that succession is yet to be completed to determine the lawful beneficiaries of the estate; that the amendment would if allowed rubberstamp the applicant as a legal widow while all issues relating to the succession have not been addressed or determined; that no amendment should be allowed till the rightful heirs have been determined and that orders allowing any person to bring suits related to the estate without the proper process of succession would throw the whole estate into jeopardy.
4. In an earlier application this court had stated as follows:

"The defendant has not acknowledged that she is a trespasser. There is still the issue of whether or not she was the wife of the deceased which has not been resolved. There is also the issue of ranking in succession matters which has been raised by the defendant, casting doubt as to whether the Grant of Letters of Administration was made to the appropriate person. Finally there is the overarching issue of whether or not the dispute herein should be resolved by the High Court which has jurisdiction in succession matters."
5. In that application the court declined the plaintiff an order that would have had the effect of an order of mandatory injunction against the defendant.
6. This suit is still alive. Any party should be allowed upon application and after the close of pleadings to amend his or her pleading if the court thinks that there is merit in that application.
7. In this case the plaintiff's argument that the succession matters have not been determined and that no person should be allowed to bring litigation related to the estate before succession is completed rings hollow in the light of the fact that he is the plaintiff in the matter. If the court were to adopt this approach his suit should be the first to be struck out.
8. In my view the matters that the defendant wishes to include in the amendments are relevant to this suit as long as the plaintiff's claim has not been withdrawn.
9. The application dated **14/8/2018** has merit. I grant the same in terms of prayers **(a)** and **(b)** thereof. The amended defence and counterclaim shall be served within **7 days** of this order.

10. It is so ordered.

Dated, signed and delivered at Kitale on this 28th day of **January, 2019**.

MWANGI NJOROGE

JUDGE

28/01/2019

Coram:

Before -Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Karani for the defendant

Plaintiff absent

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

28/01/2019