



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC NO. 528 of 2014

MERU NORTH COOPERATIVE UNION LIMITED.....PLAINTIFF

=VERSUS=

MECADA CONTRACTOR LIMITED & 4 OTHERS....DEFENDANTS

RULING

1 This is a ruling in respect of a Notice of Motion dated 4th August 2014. The application is brought by the plaintiff/applicant. It seeks leave to further amend the Plaint. The applicant contends that while this suit was pending, the 5th defendant/respondent fraudulently transferred the suit property into its name. It is on this basis that the applicant seeks to bring in the Attorney General on behalf of the Chief Land Registrar as the 6th defendant as the applicant is seeking orders cancelling the title held by the 5th defendants/respondent.

2. The applicant's application is opposed by the 1st to 3rd respondent based on grounds of opposition dated 18th September 2017 and filed in court on 26th September 2017. The 1st to 3rd respondents contend that certain amendments which the applicant seeks should not be allowed as the same will prejudice the 1st to 3rd respondents who had signed a consent with the applicant. The 1st to 3rd respondents argue that if the amendments were to be allowed, the same will nullify the consent which was entered into between them and the applicant.

3. The 5th respondent has opposed the applicant's application based on grounds of opposition dated and filed in court on 23rd October 2018. The 5th respondent contends that the amendments sought have been brought too late in the day; that the suit property legally belongs to the 5th respondent and that the amendments are a delaying tactic.

4. I have considered the application by the applicant and the opposition to the same by the 1st, 2nd, 3rd and 5th respondents. I have also considered the oral submissions made by counsel for the parties herein. The only issue for determination is whether the amendments sought ought to be granted.

5. The applicant contends that the suit property which was in its name was fraudulently transferred into the 5th respondent's name. The applicant has annexed a current search which shows that as at 9th June 2017, the suit property was in the name of the 5th respondent. If it is true that when the suit was filed, the title to the suit property was in the name of the applicant and that as the suit was pending determination, the title has changed to the 5th respondent, then it is necessary to bring on board the Chief Land Registrar through the AG as any orders of cancellation can only be directed to the Chief Land Registrar.

6. The 1st to 3rd respondents seem to be concerned about the prayers in the proposed amendment which are seeking a mandatory injunction directing the 1st to 3rd respondents to remove sewer lines from the suit property. The 1st to 3rd respondents contend that if this amendment is allowed, its effect would be to nullify a consent which was signed between the applicant and the 1st to 3rd respondents. The consent in issue had allowed the 1st to 3rd respondents to proceed with the construction of the sewer line on the disputed property. It was further agreed in the said consent that if there was any encroachment into the suit property which was found to be the case, then the 3rd respondent was to pay compensation to be established by a registered valuer. The compensation due was to be paid into an escrow bank account in the joint names of the parties pending determination of the ownership dispute between the applicant and the 5th respondent.

7. The 1st to 3rd respondents therefore argue that as the consent was adopted as order of the court, it will be very prejudicial to them if amendments were to be allowed which amendments will effectively nullify the consent. I have gone through the court record and notice that there was a consent filed in court on 22nd May 2014. This consent was never adopted as an order of the court. There was a request that the consent be adopted but that was not done. The 1st to 3rd respondents cannot therefore rely on a consent which was not adopted as order of the court.

8. The principles on which amendments are granted are clear. Amendments should be granted freely unless the same will cause prejudice which will not be compensated in costs. In the instant case, the applicant is seeking to bring in the Chief land Registrar through the Attorney General. The coming in of this Chief Land Registrar will not prejudice any party. As I have said that the consent which the parties intended to be recorded was not adopted by court, there will be no prejudice to the 1st to 3rd respondents if amendment is allowed which contains a prayer for a mandatory injunction if it turns out that there is need for grant of the same at the conclusion of the case.

9. The opposition by the 5th respondent that the amendments are a delaying tactic does not have any basis. Amendments can be allowed at any stage before conclusion of the case. The hearing of the main case has not started. I therefore find that the amendments being sought are well founded. I allow the application for amendment. The plaintiff/applicant shall file a further amended plaint within 7 days of this date. Summons should be served upon the new defendant within 15 days of filing. Costs of this application shall be costs in the cause.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 7th day of February 2019.

E.O.OBAGA

JUDGE

In the presence of;-

M/s Abobo for Plaintiff

Mr Aunga for Mr Bongo for interested party

M/s Gichuhi for Mr Nyakundi for 5th defendant

Mr Mailu for M/s Raore for 3rd defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE