



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**ENVIRONMENT AND LAND CASE No. 551 OF 2016**

LINNET WAIRIMU MUKUHA.....1<sup>ST</sup> PLAINTIFF

GRACE WAMBUI MUKUHA.....2<sup>ND</sup> PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF NAKURU.....1<sup>ST</sup> DEFENDANT

PHARIS CHEGE.....2<sup>ND</sup> DEFENDANT

GURSHARN SINGH.....3<sup>RD</sup> DEFENDANT

CHIEF LANDS REGISTRAR, NAIVASHA LANDS REGISTRY....4<sup>TH</sup> DEFENDANT

**RULING**

1. This ruling is in respect of the plaintiffs' Notice of Motion dated 13<sup>th</sup> March 2018, an application through which the plaintiffs seek leave to amend the plaint so as to introduce Lucy Wanjiku Nyaga (suing as administrator of the estate of Joseph Nyaga Wambiti) as the 3<sup>rd</sup> plaintiff and Naivasha Industrial Complex Ltd as 5<sup>th</sup> defendant. There are several other amendments sought both within the body of the plaint and in the prayers sought in the plaint. The application is supported by an affidavit sworn by the 1<sup>st</sup> plaintiff.

2. The 1<sup>st</sup> and 4<sup>th</sup> defendants did not oppose the application. On their part, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants responded through Notice of Preliminary Objection dated 15<sup>th</sup> May 2018 and a replying affidavit sworn by the 2<sup>nd</sup> defendant. The point raised in the Preliminary Objection was that the application was barred by the provisions of Order 25 rule 4 of the Civil Procedure Rules. The same argument was reiterated in the replying affidavit with the additional explanation that Order 25 rule 4 of the Civil Procedure Rules came into play since costs of an amended plaint dated 18<sup>th</sup> January 2018 herein had not been paid. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants further stated that there had been a delay of over two years prior to the application being made.

3. When the application came up for hearing, counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants withdrew the Notice of Preliminary Objection on the ground that costs had since been paid. Parties relied entirely on the materials remaining on record and urged the court to render a ruling. I have considered the application and the affidavits.

4. The general rule is that that amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side and that there is no injustice if the other side can be compensated by costs. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants who are opposing the present application have not shown that they will suffer any prejudice that cannot be compensated by costs. I would therefore ordinarily allow the application subject to an award of costs. However, in the particular context of this application, one matter caught my attention.

5. The 1<sup>st</sup> and 2<sup>nd</sup> plaintiff seek leave to amend the plaint so as to introduce Lucy Wanjiku Nyaga (suing as administrator of the estate of Joseph Nyaga Wambiti) as the 3<sup>rd</sup> plaintiff. A perusal of the supporting affidavit does not show whether the said Lucy Wanjiku Nyaga has consented to being joined as an additional plaintiff in this matter. Order 4 rule 1(2) of the Civil Procedure Rules provides that the "*plaint shall be accompanied by an affidavit sworn by the plaintiff ..*" while Order 4 rule 1(3) provides that where "*there are several plaintiffs, one of them, with written authority filed with the verifying affidavit, may swear the verifying affidavit on behalf of the others.*"

6. There is sound wisdom in the requirement that a plaintiff signifies her intention to sue by signing the verifying affidavit or by giving a written authority which is then annexed to the verifying affidavit. Litigation can be rewarding but it is also a perilous affair. There is always the risk that judgment on the main claim, on a counterclaim or on costs can be imposed against a plaintiff. Thus where existing plaintiffs seek to amend the plaint to add some other person as an additional plaintiff, the court needs to be satisfied that the proposed additional plaintiff is

aware and has consented to such addition. I would have for the foregoing reasons disallowed the aspect of the application that seeks to join Lucy Wanjiku Nyaga as an additional plaintiff. Nevertheless, the court is duty bound to be proactive and to administer justice without undue regard to procedural technicalities. It would be pointless to disallow the application only for the applicants to make the very same application a little later. That would not be prudent use of judicial time. I am therefore for an approach that gives the applicants a chance to remedy the anomaly.

7. In the end, I make the following orders:

- a) Leave is hereby granted to the plaintiffs to amend the plaint herein as per the draft amended plaint annexed to the plaintiffs' Notice of Motion dated 13<sup>th</sup> March 2018. Costs in the cause.
- b) The amended plaint to be filed and served together with a verifying affidavit sworn by Lucy Wanjiku Nyaga (suing as administrator of the estate of Joseph Nyaga Wambiti) within 14 (fourteen) days from the date of delivery of this ruling.
- c) In default of filing and serving a verifying affidavit sworn by Lucy Wanjiku Nyaga (suing as administrator of the estate of Joseph Nyaga Wambiti) within the period stated above, Notice of Motion dated 13<sup>th</sup> March 2018 shall stand dismissed with costs to the defendants.

8. Delay in delivery of this ruling was occasioned by the fact that I proceeded on medical leave. The delay is regretted.

**Dated, signed and delivered in open court at Nakuru this 30<sup>th</sup> day of April 2019.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr Waiganjo for the plaintiffs/applicants

Mr Konosi for the 1<sup>st</sup> defendant/respondent

No appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/respondents

No appearance for the 4<sup>th</sup> defendant/respondent

Court Assistants: Beatrice & Lotkomoi