



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. 46 OF 2010

ETHICS & ANTI CORRUPTION

COMMISSIONPLAINTIFF

VERSUS

WILSON GACANJA.....1ST DEFENDANT

WILLIAM KIPSEREM BUSIENEL.....2ND DEFENDANT

INDUSTRIAL & COMMERCIAL

DEVELOPMENT CORPORATION.....3RD DEFENDANT

RULING

1. By an application dated **16/7/2018**, the plaintiff seeks leave be granted to amend the plaint and costs of this application be in the cause. The application is brought under **Section 3A of the Civil Procedure Act, Order 8 Rule 3(1) and Rule 5(1), Order 51 of the Civil Procedure Rules**.
2. The Notice of Motion is founded on the grounds set out at the foot of the application and in the supporting affidavit of the plaintiff. The main ground is that a series of transactions were carried out by the Director of Surveys leading to the preparation of a survey scheme for the purpose of identifying and earmarking the land from which the suit properties had been hived off and that it led to the amalgamation of the suit lands with other lands. The further ground is that one of the suit properties had its title revoked in the year **2010** and following that revocation and the preparation of a new survey scheme and the creation of parcel number **Kitale Municipality Block VI /300**, the suit properties ceased to exist independently. Further the government allotted the said parcel number **Kitale Municipality Block VI /300** to the Kenya National Library service. In the light of the foregoing it is deponed that there is need to amend the plaint in order to harmonise the pleadings with the evidence to be given at the hearing.
3. The 2nd defendant filed grounds of opposition dated **12/10/2018** to the application was filed on **16/7/2018** and states that there is no justification for the proposal to amend the plaint and that the intent of the applicant is to introduce an entirely new cause of action.
4. The plaintiff filed submissions on **11/10/2018**. He relies on the case of **Nairobi HC Petition No. 71 of 2013 Institute for Social Accountability & Another -vs- Parliament of Kenya & 3 Others [2014] eKLR** in relation to amendment of pleadings.
5. It is trite that amendments of pleadings may be allowed at any time before judgment.
6. I find that the changes to the suit land require that amendments be made to the plaint. I also find that the remedies do not substantially change since they still relate to the land subject matter of the suit.
7. Further even if there is a prayer for a declaration that the land vests in the Kenya National Library Service, I do note that that is an institution under the National Government for which the suit land was initially alleged to have been set aside. That allegation was contained in the original un amended plaint and it is not new and so the prayer is not strange or misplaced.
8. In my view the application is merited and I hereby grant it in terms of prayer number **1** and **2** thereof. The amended plaint shall be filed and served upon all the other parties within **14** days of this order.

Dated, signed and delivered at Kitale on this 29th day of April, 2019.

MWANGI NJOROGE

JUDGE

29/4/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Mokuu for plaintiff

N/A for the defendants

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

29/4/2019