



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 253 OF 2013

ERASTUS K. LANGATPLAINTIFF

VERSUS

REGISTRAR OF LANDS NAKURU & 9 OTHERS ...DEFENDANTS

RULING

(Application seeking leave to amend plaint to remove some persons who had died before the suit was instituted; application allowed).

1. The application before me is that dated 25 February 2019 filed by the plaintiff. The application is brought pursuant to Order 8 Rule 3 of the Civil Procedure Rules and in the application the plaintiff seeks leave to amend his plaint. The application is supported by his own affidavit and an annexed draft amended plaint.

2. The suit itself was filed on 8 May 2013 against 10 defendants. The plaintiff pleaded that he is the owner of land that he described as Boma 85 Plot No. 365 which had been subdivided into the plots Nakuru/Olenguruone/Cheptuech / Nos. 596 595, 593, 592, 665, 243, 591, 594, 598, 589, 242, 709, and 708 said to have been further subdivided into the plots No. 831 and 830. The land is about 70 acres and the plaintiff averred that he has fenced off this land and resides in it with his family. He pleaded that he is of Ogiek origin and was issued with an allotment to the Plot No. 365 on 21 January 1965. He pleaded that adjudication was done in his absence but his family was on the land, and instead of being issued with title, the land was fraudulently subdivided and titles issued to other people leaving the plaintiff with only 9 acres. He pleaded that the 4th – 10th defendants proceeded to the Land Disputes Tribunal and obtained an award in their favour which they want to use to evict him. In the suit, he asked for a cancellation of the 4th-10th defendants' titles and a nullification of the proceedings of the Land Disputes Tribunal, Appeals Committee, and the proceedings in Molo Magistrate's Court relating to the Tribunal proceedings.

3. The 4th – 10th defendants filed a joint statement of defence through the law firm of M/s S.G On'ganyi & Company Advocates, on 3 June 2013, whereas the State Law Office filed defence on behalf of the 1st – 3rd defendants on 3 September 2013. The matter came up for a pre-trial conference on 19 October 2017 when Mr. Kipkoech of the law firm of M/s Gordon Ogola & Kipkoech, who had taken over the matter from the law firm of M/s S.G On'ganyi & Company, submitted that some defendants had died prior to the suit being filed and some died afterwards. Given these submissions, I directed the plaintiff to assess his position and gave him leave to file an application to amend the plaint within 60 days. The 60 days lapsed without any application for amendment being filed but the plaintiff filed an amended plaint on 12 October 2018, which I struck out for being incompetent. It is then that this application was filed.

4. The applicant has stated that he has filed the application because it has come to light that some defendants are deceased and the case cannot proceed against them. I have seen that he wants to remove the 5th and 6th defendants, and I think by his action, he acknowledges the claim raised by Mr. Kipkoech that they had died when this suit was filed.

5. I have no reason not to allow the application and I allow it.

6. Mr. Gai, for the applicant, argued that his client should not be condemned to pay costs since his client filed suit after being confronted with an eviction order in favour of the 4th -10th original defendants, and not knowing them, he filed suit against all of them. He also pointed out that appearance and defence was filed on their behalf yet counsel acting for them must have known that they are deceased. I agree with Mr. Gai. I think given these facts, it is only fair that there be no orders on the costs of the application.

7. The application is therefore allowed with no orders as to costs. The amended plaint can be filed and served in 7 days.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 4th day of April 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Koome holding brief for Mr.Gai for the plaintiff/applicant.

No appearance for the defendants.

Court Assistant- Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU