



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CASE NO. 53 OF 2015

PIRY JOHNSTONE MUYE.....PLAINTIFF

VERSUS

SHARIFF OMAR MOHAMED.....DEFENDANT

RULING

1. I have before me for determination a Notice of Motion application dated and filed herein on 12th March 2018. By the said Motion, the Plaintiff Piry Johnstone Muye prays for leave to amend his Plaint as per a draft that he has annexed to the application.

2. The said application is premised on the grounds:-

i) That the suit relates to LR No. 7733/III/Kikambala which has since been subdivided into three portions;

ii) That it is now imperative that the Plaint be amended to reflect the true and correct position as regards the suit property and the parties herein; and

iii) That the intended amendment will assist this Court to effectually and finally determine all matters in issue.

3. In a Replying Affidavit filed herein on 22nd May 2018 by Jafar Sharif Omar, he complains that he has been “misjoined” as a Defendant herein. He further avers that he is the owner of property known as LR No. 22036-Kijipwa and not Plot No. 7733/III/Kikambala and/or the sub-division listed by the Plaintiff.

4. The deponent further avers that he is a distinct and different individual from Sharriff Omar Mohamed originally sued as the Defendant herein. It is further his case that save for the fact that the said Sharriff Omar Mohamed is his biological father, there is no agency or legal relationship between the two of them.

5. I have considered both the application and the response thereto. I have also considered the written submissions by the Learned Advocates for the parties.

6. Order 8 Rule 1(1) of the Civil Procedure Rules stipulates that:-

“The Court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.”

7. In addition, Order 8 Rule 5 stipulates that:-

“An amendment shall be allowed under sub rule(2) notwithstanding that its effect will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.”

8. In the matter before me, the Applicant contends that the amendment sought has been necessitated by a sub-division of the suit property and the clarification he has now received as to the correct name of the Defendant. On the other hand, the Defendant is opposed to the intended amendment contending that his parcel of land is not the one described by the Plaintiff and further that the Plaintiff has confused his name with that of his father.

9. As was stated by the Court of Appeal in *Central Bank of Kenya –vs- Trust Bank & 4 Others, Civil Appeal No. 222 of 1998:-*

“...all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly be compensated for in cost.”

10. In the proceedings before me, the amendments sought are meant according to the Plaintiff, to clarify the correct parcel of land in dispute. From a perusal of the annexed draft amended Plaintiff, the only other amendment intended to be introduced is the name “Jaffer Sharriff” as an alias or other name by which the Defendant is known.

11. I am unable to see how those amendments will occasion any prejudice to the Defendant who is yet to testify herein.

12. Accordingly the application dated 12th March 2018 is allowed.

13. The costs shall be in the cause.

Dated, signed and delivered at Malindi this 29th day of May, 2019.

J.O. OLOLA

JUDGE