



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 103 OF 2017

ELIJAH ASIWATUM (Suing as legal representative of the late

MIRRIAM C. ASIWATUM).....PLAINTIFF

VERSUS

NELLY CHEPKEMOI POCHARA.....1ST DEFENDANT

OSCA KEMOI POCHARA.....2ND DEFENDANT

(Sued as legal representative of the late REUBEN LOKITARI POCHARA)

RULING

1. The application dated **13/3/2019** and filed in court on the same date has been brought by the plaintiff. It seeks the following orders:-

- (1) That the plaintiff/applicant herein be granted leave to amend his plaint**
- (2) That LOLINGA LOLINGANYANG LOKORINGOR be enjoined in this suit as interested party**
- (3) That draft amended plaint annexed hereto be deemed as duly filed and served.**
- (4) That costs be in the cause.**
- (5) Any other or further orders as the court may deem just and expedient.**

2. The applicant has brought the application pursuant to **Order 1 Rule 10 (2) and order 8, Rule 3** of the **Civil Procedure Rules and Section 3 and 3A of the Civil Procedure Act**.

3. The application is supported by an affidavit of the applicant dated **13/3/2019**. The grounds upon which the application is made are contained at the foot of the application and in the supporting affidavit. Briefly those grounds are that the amendments sought would if allowed bring to the fore the real issues for determination and are necessary to enable the court properly adjudicate over the issues in the controversy; that no prejudice will be occasioned to the defendants if the orders sought herein are granted and that the amendments are to bring real issues for determination.

4. In opposition to the application the defendants filed grounds of opposition dated **26/3/2019** stating that the application **offends Order 1 rule 10(2)** of the **Civil Procedure Rules 2010** and that there is no provision for a party to be enjoined as an interested party in proceedings such as in this case. The further ground is that the application is brought in bad faith since the applicant has not served the party he wishes to enjoin in the suit.

5. Both parties, preferring to rely on their affidavits in the application did not file submissions in this matter. I have considered the application and the response thereto. The main question is if the proposed amendments to the plaint can be allowed.

6. The plaintiff's case is that the applicant is the legal representative of Miriam Asiwatum (deceased), the deceased purchased land which was part of **West Pokot/Siyoi"A" /4215**. Upon her demise the plaintiff and one Samuel powon the deceased's only surviving child took possession thereof. The land was assigned number **West Pokot/Siyoi"A"/5467** after subdivision. The defendants applied for a grant of letters of administration. In the course of time they deleted the name of the deceased as a purchaser of the suit land and in lieu thereof named the proposed interested party as a purchaser of the suit land as renamed. The original prayers sought only a declaration that the plaintiff is entitled to the suit land to hold it on behalf of Samuel Powon.

7. The amendments aver that the proposed interested party was given possession of the suit land after the deceased died and supported the unlawful actions of the interested party. The amendments also state that the deceased was in possession of the suit land before her demise and her remains were buried on the suit land. The prayers have been amended to reflect the claim that the defendants are holding the suit land in trust for the plaintiff who should hold the land in trust for Samuel Powon. The claim of fraud has been retained.

8. I have considered the amendments and I have found them to accord with the original particulars in the plaint filed on **8/6/2017**. They further clarify the plaintiff's claim. I do not find, and the respondent has not shown, anything objectionable about the proposed amendments. The applicant is entitled to amend the plaint if the amendments will enable the court to properly adjudicate over the matter.

9. Consequently I find that the application dated **13/3/2019** is merited and I grant the same in terms of prayers **1, 2, 3 and 4**. The amended plaint shall be filed and served upon all the other parties to the suit within **14** days of this order.

It is so ordered.

Dated, signed and delivered at Kitale on this 6th day of May, 2019.

MWANGI NJOROGE

JUDGE

6/5/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Nyamu for defendants

Mr. Barongo holding brief for Lowasikou

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

6/5/2019