



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.71 OF 2016

BEYOND HOUSING CO-OPERATIVE SOCIETY LIMITED.....PLAINTIFF

VERSUS

THE COUNTY SECRETARY, NAKURU COUNTY

GOVERNMENT AND 3 OTHERS.....DEFENDANT

AND

COUNTY ASSEMBLY OF NAKURU.....INTERESTED PARTY/APPLICANT

RULING

(Application for leave to amend plaint; plaintiff claiming interference with its properties by officers of the county government; plaintiff now seeking to amend to include two defendants resident in the suit properties and seeking their eviction; application allowed)

1. The application before me is that dated 7 February 2019 filed by the plaintiff. It is an application brought pursuant to the provisions of Order 8 Rule 3 of the Civil Procedure Rules, and the principal order sought is leave to amend the plaint. To the application, the applicant has annexed the draft amended plaint.
2. By way of background, this suit was commenced through a plaint which was filed on 4 March 2016. In the plaint, the applicant pleaded inter alia that it is the registered proprietor of the land parcel Nakuru Municipality Block 21/24 and Nakuru Municipality Block 21/25 which the applicant avers were sold to it by Kenya Railways Corporation through a public tendering process. The applicant avers that it purchased the said properties in the year 2009 at a consideration of Kshs. 16,600,000/= and on 19 August 2013, it was issued with the certificates of lease. In the year 2014, it is averred that the applicant applied for approval to build a perimeter wall which plans were duly approved on 30 July 2014. A wall was then constructed at a cost of Kshs. 10,000,000/=. It is pleaded that on 22 June 2015 and 23 August 2015, one Francis Njoroge, a member of the County Assembly of Nakuru County, representing London ward, where the suit properties are situated, without any colour of right, invaded the suit properties with hired goons and extensively damaged the perimeter fence. It is pleaded further that on 3 March 2016, the 2nd defendant (the County Executive Committee Member, Lands, Housing & Physical Planning of Nakuru County) was summoned to appear before the County Assembly of Nakuru and the said County Assembly directed the 2nd defendant to take possession of the suit properties and place county guards on the premises and revoke the approved plans. The applicant was also served with an enforcement notice ordering a stop to all forms of developments. It is the view of the applicant that the defendants are acting in collusion with the said Francis Njoroge Njogu to frustrate the applicant from enjoying quiet possession of the suit properties.
3. In the suit, the applicant sought orders of a permanent injunction to restrain the defendants from interfering with his quiet possession of the suit properties alongside costs and interest.
4. From the draft amended plaint annexed to the application, it appears to me that the applicant wishes to amend its plaint so as to add two parties as additional defendants, that is, Ann Wangeci Muiruri and Margaret Njeri Kirigo. It is sought to be pleaded that the two additional defendants are illegally squatting in some old dilapidated structures that were on the land when the applicant purchased them and that they have refused to move out despite being notified to vacate. The applicant further seeks to add an additional prayer for their eviction.
5. Courts are generally liberal when it comes to allowing a party leave to amend its pleadings. On a general scale, amendments ought not to be denied unless there is a demonstration that the other parties in the litigation stand to suffer prejudice if the amendment is allowed. In the circumstances of this case, the suit is yet to commence. I do note that the gist of the amendment is to add additional parties and seek their eviction and these persons will have an opportunity to respond to the suit and give reasons why they ought not to be evicted. The amendments sought do not in any way prejudice the existing defendants.

6. That being the position, I do allow the application and do grant leave to the applicant to amend its plaint in line with the draft amended plaint within 14 days.

7. I make no orders as to costs.

8. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 20th day of June 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Katithi holding brief for Mr. Ndubi for the applicant.

Mr. Kahiga for the interested party.

No appearance on the part of M/s Ikuu Mwangi & Co. for the defendants.

Court Assistants: Nelima Janepher/Patrick Kemboi.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU