



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 86 OF 2018 (O.S)

MAVOLONI COMPANY LTD.....PLAINTIFF

VERSUS

THE LAND REGISTRAR - THIKA.....1ST DEFENDANT

THE DIRECTOR OF SURVEY.....2ND DEFENDANT

THE COMMISSIONER OF LANDS.....3RD DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

KENYA AFRICAN NATIONAL TRADERS

AND FARMERS UNION.....5TH DEFENDANT

LONGNECK INTERNATIONAL LIMITED.....6TH DEFENDANT

DOMINIC KAMATA NJOGO.....7TH DEFENDANT

HELLEN NDUTA KAMATA.....8TH DEFENDANT

KENNETH KARATU KIBUNJA.....9TH DEFENDANT

YAHYA MUHAMED SULEIMAN.....10TH DEFENDANT

NAIMA SULEIMAN.....11TH DEFENDANT

DOMINIC KIKUL.....12TH DEFENDANT

ELIAS KIMANI.....13TH DEFENDANT

TERESIA NDUKU.....14TH DEFENDANT

STANDARD CHARTERED MANAGEMENT

AGENTS LTD.....15TH DEFENDANT

RULING

1. What is before me is the Notice of Motion dated 25th September, 2018 filed by the Plaintiff. In the Application, the Plaintiff is seeking for the following orders:

a. The Plaintiff/Applicant be granted leave to further amend the Originating Summons.

b. The further amended Originating Summons annexed herein be deemed as duly filed once payment of requisite fees has been done.

c. The costs of the Application be in cause.

2. The Application is premised on the grounds that the Plaintiff filed this suit in the year 2008; that the previous advocate on record failed to plead fraud on the part of the Defendants in the Originating Summons and that the Defendants will not suffer any prejudice if the Application is heard.

3. The Plaintiff's Chairman deponed that the law allows for pleadings to be amended at any time before delivery of Judgment and that the Application should be allowed.

4. The 12th, 13th and 14th Defendants filed their Grounds of Opposition in which they averred that the proposed amendments have been overtaken by events; that the proposed amendments are time-barred because the impugned titles were issued to the Defendants in 1993 and that the Application is an abuse of the court process.

5. This suit was commenced by way of Originating Summons in the year 2008. Since then, the matter has never been heard and finalized. In its claim, the Plaintiff has alleged that without its knowledge and consent, the 5th to 14th Defendants fraudulently colluded with some of the Plaintiffs' Directors and officials and caused the 5th to 14th Defendants to be registered as proprietors of some of the parcels of land.

6. In the current Application, the Plaintiff is seeking the leave of the court to amend its Originating Summons and plead fraud on the part of the Respondents. It would appear that the current Application was prompted by the Ruling of Okongo J. dated 17th February, 2017 in this matter when he held as follows:

“Fraud must be pleaded with particulars and strictly proved. There are no particulars set out in the Amended Originating Summons as to how each of the Defendants participated in the illegalities and fraud levelled against them by the Plaintiff.”

7. Order 8 Rule 5(1) of the Civil Procedure Rules provides as follows:

“5(1) For the purpose of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.”

8. The amendments sought by the Plaintiff are meant to correct a defect in the pleadings that were filed. Indeed, the inclusion of the particulars of fraud in the Originating Summons will enable the court determine the real questions in controversy between the parties here.

9. Considering that no prejudice that cannot be compensated by damages will be occasioned to the Defendants if the amendments sought are allowed, I allow the Plaintiff's Application dated 25th September, 2018 as prayed. The Plaintiff to file the Further Amended Originating Summons within fourteen (14) days of the date of this Ruling.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 14TH DAY OF JUNE, 2019.

O.A. ANGOTE

JUDGE