



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERUGOYA

ELC CASE NO. 743 OF 2013

DANSON MAINA NJUGUNA.....1ST PLAINTIFF

JOHNSON MUTURI MAINA.....2ND PLAINTIFF

REUBEN KIMANI MUIRURI.....3RD PLAINTIFF

GACHOKI MURAGE.....4TH PLAINTIFF

MICHAEL KAMUCHURE.....5TH PLAINTIFF

VERSUS

BEATRICE WAMBUI MUKUNGI.....DEFENDANT

RULING

The application before me is the Notice of Motion dated 21st January 2019 brought under **Order 8 Rule 3 and 5 (1), Order 51 CPR, Section 1, 1A and 3A CPA**. The applicants are seeking leave to amend the plaint herein. They have attached a draft amended plaint to the supporting affidavit. The application is supported by an affidavit sworn by John Muturi Maina ((2nd plaintiff) in which he deponed that the 3rd, 4th and 5th plaintiffs are deceased. The application further deponed that one Peter Karimi Ndugutu is the registered proprietor of the suit property and that the proposed amendment of the plaint is intended to include the said Peter Karimi Ndugutu and that the amendment will assist in determination of the real issues in controversy. The applicants also contend that no party shall be prejudiced by the proposed amendment.

The application is strenuously opposed with a 74 paragraph replying affidavit supported by numerous annexures. The respondent contends that she is the sole proprietor of the suit property as the widow of one Patrick Njeru M'uriga who bought the land L.R. No. MUTIRA/KANGAI/702 in 1973 from the late Wagatari Maria Gatandi while L.R. No. MUTIRA/KANGAI/701 was given to her as a gift by Wagateri Maria Gatandi in 1981. She denies that one Peter Karimi Ndugutu is the original owner of the suit property.

I have considered the application, the supporting affidavit and the replying affidavit. I have also considered the annexures and applicable law. The principles guiding amendment of pleadings are well established. Beginning with the concept of amendment in general, **Order 8 Rule 1 (1) of the Civil Procedure Rules** stipulates as follows:

“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”.

Again **Order 8 Rule 5** states thus:

“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 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”.

Further, **Halsbury's Laws of England, 4th Edition (re-issue) Vol. 36 (1) at paragraph 76** sets out the requirements for an amendment as follows:

“The purpose of the amendment is to facilitate the determination of the real question in controversy between the parties to any

proceedings and for this purpose the Court may at any stage order the amendment of any document, either on application by any party to the proceedings or of its own motion”.

In the case of *Central Kenya Ltd Vs Trust Bank & 4 others Civil Appeal No. 222 of 1998*, the Court of Appeal held:

“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 costs”.

The respondent in this case deponed that she is the bonafide owner of the suit property and that the application is made without full disclosure of material facts. However, the respondent has not stated what injury she is likely to suffer which cannot be compensated by costs. I find the application dated 21st January 2019 merited and the same is allowed in the following terms:

- 1. The plaintiffs/applicants are granted leave to amend the plaint in the manner proposed in the draft amended plaint.*
- 2. The plaintiffs/applicants to file the amended plaint within seven (7) days from today.*
- 3. The defendant/respondent shall amend her defence in accordance with the Civil Procedure Rules.*
- 4. The plaintiff shall bear the costs of this application.*

READ, DELIVERED and SIGNED in open Court at Kerugoya this 12th day of June, 2019.

E.C. CHERONO

ELC JUDGE

12TH JUNE, 2019

In the presence of:

- 1. Mr. Gitonga holding brief for Mr. Ngigi***
- 2. Mr. Okumu holding brief for Mr. Ondieki***
- 3. Court clerk - Mbogo***