



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 06 OF 2019

MARYANN MOHAMED CHEABRIL (Suing as the administrator

of the estate of Asha Jabril Mohamed (deceased).....PLAINTIFF

VERSUS

MICHAEL KOOME MBURUGU.....1ST DEFENDANT

ISIOLO COUNTY GOVERNMENT.....2ND DEFENDANT

JEDIEL KIRIMI RUTERE.....3RD DEFENDANT

CHIEF LAND REGISTRAR.....4TH DEFENDANT

THE NATIONAL LAND COMMISSION.....5TH DEFENDANT

THE DIRECTOR OF SURVEY.....6TH DEFENDANT

THE ATTORNEY GENERAL.....7TH DEFENDANT

RULING

1. This application is dated **27th June, 2018** and seeks orders:

1. That leave be granted to the plaintiff to amend the plaint in terms of the annexed amended plaint filed herein.
2. That leave be granted to the plaintiff to join the Chief Land Registrar, The National Land Commission, The Director of Survey and The Attorney General as the 4th, 5th, 6th and 7th defendants respectively in this suit.
3. That cost of this application be provided for.

2. The application is supported by the affidavit of **Ahmed Khadhar Mohamed** sworn on **27th June, 2018** and has the following grounds:

- a) The plaintiff is desirous of amending the plaint to further join four more defendants herein Chief Land Registrar, The National Land Commission, The Director of Survey and The Attorney General who are necessary to be included, to enable the court dispense with the issues arising from the transaction once and for all.
- b) There has been no in ordinate (sic) delay in presenting the application for amending the plaint.
- c) The defendants will not in any way be prejudiced as the cause of action remains the same and the capacity under which the plaintiff sues remains the same as it would have been at the date of filing the plaint.
- d) The case has still not been heard on its merits yet and it is therefore in the interest of justice that the plaintiff be allowed to file an amended plaint and join the four intended defendants to this suit.

3. The **supporting affidavit** states as follows:

I, **Ahmed Khadhar Mohamed** of the Identity Card Number 23944956 in the Republic of Kenya do make oath and state as follows:

1. That I am a male adult of sound mind, and authorized by the plaintiff herein the administratrix of the estate of the late Asha Jabril Mohamed (deceased) herein therefore competent to swear this affidavit.
2. That I was appointed through Special Power of Attorney dated 27th Februry, 2018 to appear in any court or Tribunal in Kenya and more particularly to appear, plead, act, attend High Court in Environment and Land Court at Meru Case No. 83/2017 (ELC Case 83 of 2017) on her behalf. Annexed hereto and marked AKM – 1” is a copy of the Special Power of Attorney dated 27th February, 2018).
3. That the administratrix of the estate of the late Asha Jabril Mohamed pursuant to the grant of letters of administration intestate issued on 19th January, 2017, in the Chief Magistrate Court at Isiolo Probate and administration Cause No. 12 of 2016 (sic).
4. That on 25th June, 1986, my late aunt, Asha Jabril Mohamed (deceased) was allotted the piece of land LR. No. 7918/107 situated in Isiolo by the County Council of Isiolo. (Annexed hereto and marked “AKM-2” is a copy of letter of allotment).
5. That my deceased aunt and the family were guaranteed quiet possession of the said parcel of land, LR. No. 7918/107 and had fenced off the same although the property was not developed. (Annexed hereto and marked “AKM-3” is a copy of the title deed).
6. That it is the 3rd defendant’s case that he was allocated the same piece of land by the commissioner of lands at Isiolo in 1999 and that in the year 2001 he was formally registered as the owner of all that commercial plot Isiolo Township Block 4/144 measuring 0.0288 hectares and that he sold the said parcel of land to the 1st defendant in the year 2016.
7. That it has come to my attention after conducting my own investigations that LR. NO. 7918/107 and LR 7918/85 describe the same spatial location on the physical ground, registered as Isiolo Township Block 4/144.
8. That to tackle all questions as to the genuineness of both titles and in order for the court to interrogate all facts, it is important to join the Chief Land Registrar, The National Land Commission, The Director of Survey and the Attorney General as the 4th, 5th, 6th and 7th defendants respectively in this suit and hence the plaintiff’s application for leave to join the proposed defendants and to amend the plaint herein be granted.
9. That unless the prayers herein are granted the deceased estate will suffer irreparable loss and damage which loss cannot be compensated in damages.

4. During the date slated for interpartes hearing, only Mr. Ndege, the plaintiff’s advocate turned up. He asked the court to allow the application as it was not opposed. He told the court that he relied on the affidavit sworn on **27th June, 2018** by Ahmed Khadhar Mohamed (op.cit) and apposite annextures.

5. Upon perusal of the application and apposite supporting documents, I do find it necessary to allow it so that the parties can effectively ventilate all germane issues.

6. It is ordered as follows:

- a. Prayers **1 and 2 in the application are allowed.**
- b. Costs shall be in the cause.
- c. The plaintiff is directed to serve the orders issued by the court today upon the **1st, 2nd, 3rd, 4th, 5th, 6th and 7th** defendants within **14 days of today.**
- d. All parties are directed to fully comply **with order 11 of the Civil Procedure Rules within 30 days of today.**
- e. Parties to come to court for **directions on 25th September, 2019.**

Delivered in open Court at Chuka this 15th day of July, 2019

in the presence of:

CA: Ndegwa

Ndege h/b Lakicha for the plaintiff

Ndege h/b Murango Mwenda for the 3rd defendant

P.M. NJOROGI

JUDGE