



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 741 OF 2011

KENNETH KIRIKA WATENE.....PLAINTIFF

VERSUS

PETER KIMANI KAIRU T/A K.N. ASSOCIATES.....1ST DEFENDANT

THE REGISTERED TRUSTEES OF SOCIAL

MINISTRY RESEARCH NETWORK CENTRE.....2ND DEFENDANT

MBAGE NJUGUNA NGA'NGA t/a WARUHIU

K'OWADE & NG'ANG'A ADVOCATES.....3RD DEFENDANT

PRINCIPAL REGISTRAR OF LANDS.....4TH DEFENDANT

COMMISSIONER OF LANDS.....5TH DEFENDANT

RULING

Through the application dated 19/03/2019, the Plaintiff seeks leave to re-amend the amended plaint as shown on the annexed draft. The application is made on the ground that the Plaintiff has noted that some prior amendments were not done properly and that certain averments needed clarity, improvement and comprehensiveness. The Plaintiff also urged that the proposed amendments do not require any new evidence. He also advanced the ground that it is in the interest of justice for him to be allowed to re-amend the amended plaint to enable the court determine all the questions in controversy at once. The suit was scheduled for highlighting of submissions on 03/04/2019 after the suit was heard.

The application was further supported by the Plaintiff's supporting affidavit sworn on 19/03/2019 in which the Plaintiff deponed that he was advised by his advocates that after the last party closed its case, his advocates realised that there were some errors occasioned when he last amended the plaint that needed to be included before a determination was made by the court.

The 1st Defendant filed grounds of opposition dated 16/05/2019 urging that the Plaintiff's application was filed inordinately late and is an abuse of the court process. Further, that the matters sought to be introduced by the Plaintiff at this stage after the hearing was concluded will prejudice the parties who have testified and closed their cases. Further, that the proposed amendment seeks to introduce a new cause of action to the detriment of all the parties.

The 2nd Defendant also filed grounds of opposition dated 25/04/2019. The 2nd Defendant urged that the intended amendments are inconsistent with the previous pleadings as the Plaintiff seeks to introduce a new document termed as "partial conveyance" which was not produced.

The 2nd Defendant also urged that the Plaintiff's application was an afterthought whose effect is to delay the determination of this suit, which goes against Article 159(2) (c) of the Constitution and the overriding objectives provided for under the Civil Procedure Act mandating the courts to expeditiously dispose of cases.

The 3rd Defendant filed grounds of opposition dated 08/04/2019 and contended that the Plaintiff's application is grossly misconceived as the Plaintiff previously sought and was granted leave to amend his Plaint and that the amendments proposed were always within the Plaintiff's knowledge and the parties have already been heard and they have closed their cases.

Counsel for the Plaintiff submitted that the amendments sought are merely intended to connect the pleadings to make them fluent enough and that there will be no need for additional evidence. Counsel for the 1st Defendant submitted that the Plaintiff has not demonstrated that he will suffer prejudice if the amendments sought are not granted. He also submitted that the proposed amendments will enjoin the 1st Defendant to call additional evidence to rebut the new allegations. Counsel for the 2nd Defendant associated himself with the 1st Defendant's submissions. Counsel for the 3rd Defendant submitted that paragraph 10 of the draft re-amended plaint introduces a claim for fraud which requires evidence yet the case has already been heard and concluded.

The court has considered the application, the grounds of opposition together with the parties' submissions. After the Plaintiff closed his case, the Defendants also presented and closed their cases. Parties filed their written submissions on the issues for determination in the suit. The court notes that the Plaintiff has previously been granted leave to amend his plaint and he did file an amended plaint.

The Plaintiff has not demonstrated the prejudice he is likely to suffer if the proposed amendment is not allowed. On their part, the Defendants have demonstrated that having closed their cases they stand to suffer prejudice if the Plaintiff is allowed to amend his claim at this late stage. The application to amend the plaint further ought to have been made timeously by the Plaintiff.

The Plaintiff's application dated 19/03/2019 has no merit and is dismissed with costs to the Defendants.

Dated and delivered at Nairobi this 8th day of August 2019

K.BOR

JUDGE

In the presence of: -

Mr. M. Mugambi for the Plaintiff

Mr. M. Wageita for the 1st Defendant

Mr. A. Issack holding brief for Mr. Muchiri for the 2nd Defendant

Mr. B. Situma holding brief for Mr. Thiga for the 3rd Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 4th and 5th Defendants