



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 36 OF 2017

FORMERLY NAKURU ELC NO. 270 OF 2013

DANIEL SUDOI KURAO.....1ST PLAINTIFF/APPLICANT

WILSON KISOMPE TIKANI.....2ND PLAINTIFF/APPLICANT

-VERSUS-

PAMELA ATIENO OLUOCH.....1ST DEFENDANT/RESPONDENT

SYLVESTER MAROKO SIJENY.....2ND DEFENDANT/RESPONDENT

DISTRICT LAND REGISTRAR.....3RD DEFENDANT/RESPONDENT

RULING

By a Notice of Motion dated 12th July, 2017 and brought under Order 51 Rule 1, Order 1 Rule 3 and Order 2 Rule 5 the Applicant sought for orders to amend the plaint filed in court on 28th March, 2013. The Application is based on the grounds that there was fraud in the manner in which the suit land was acquired and further that during the pendency of the suit the same has been sub-divided and sold to third parties and that the said sub-division was occasioned by one Rebecca Okokia Lemein and hence it will necessitate the amendment of the plaint. The Applicants contend the amendment sought will not prejudice the Respondents.

The Application was further supported by the Affidavit of the 1st Plaintiff/Applicant in which he deponed that the aforesaid Rebecca Okokia Lemein purports to be the original owner of the suit parcel of land. The Application was opposed by the Respondents by way of a Replying Affidavit sworn by the 1st Defendant/Respondent. She denies that the suit land was sub-divided as alleged by the Applicant and further that by the time they purchased the land Rebecca Okokia Lemein had not transferred the land to herself.

I have read the Application before me and the submissions by the counsel for the parties. The Application before court is one which the Applicants seek the court's discretionary powers to allow for the amendment of his plaint the grounds upon which an Application of this nature is now settled.

I have looked at the Application and the proposed Amended Plaint and the Respondents Replying Affidavit and I find that the suit before court involves numerous transactions in respect of land parcels Cis Mara/Oleleshwa/4187 and 4188 and later sub-divided into various parcels that is Cis Mara/Oleleshwa/5308 and 5309 and it is my view that for the court to be able to adequately determine the issue between the parties it shall be prudent and shall serve the interest of justice to have the instant Application heard and in the circumstances, I will allow the Notice of Motion dated 12th July, 2017 in the following terms:-

1. That the Notice of Motion dated 12th July, 2017 is allowed and Rebecca Okokia Lemein be enjoined as the 4th Defendant.
2. That draft amended plaint be deemed as filed subject to the payment of the requisite fees.
3. That the Amended Plaint be served on the Defendants within 14 days and leave is granted to the Defendants to file their Amended Defence within 14 days thereafter.
4. That all parties do comply with the provisions of order 11 within 30 days of filing of the Defence and reply to Defence if any.

5. Each party to bear its cost.

DATED, SIGNED and DELIVERED in open court at NAROK on this 8th day of October, 2019

Mohammed Kullow

Judge

8/10/19

In the presence of: -

CA:Chuma/Kimiriny

Mr Simiyu for the Plaintiff

Ms Mogere for the 1st and 2nd defendant

N/A for the 3rd defendant

N/A for the Applicant

Mohamed Kullow

Judge

8/10/19