



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 215 OF 2014

HARAN NJUE RUBICHU alias NJUE RUBICHU.....PLAINTIFF

VERSUS

NDIMA TEA FACTORY.....DEFENDANT

RULING

The applicant vide an application dated 30.4.2019 brought under **Section 3 and 3A CPA** sought the following orders:-

- 1) That the plaintiff be granted leave to amend his plaint and bring in other two defendants.***
- 2) That cost of this application be provided for.***

The application is based on ground apparent on the face of the application supported by his own affidavit sworn the same date. According to him he had filed this suit without full information of the person who dispossessed him of his land. He stated that he has since discovered that some two people who appear to be brothers colluded to take over his land which information he obtained much later after he visited the County Land offices. He attached a copy of the green card marked **HNR 1**.

The defendant through its unit manager one Daniel G. Kanja filed a replying affidavit opposing the said application. According to him, this suit is part heard before Hon. Mr. Justice Olao who upon being transferred to Bungoma, Hon. Justice Mukunya took over and directed that the case be heard denovo and that parties do file other documents and paginate them. The defendant further stated that the plaintiff seeks to amend his pleadings based on a green card which he had filed in his further list of documents at page 18. He stated that it cannot therefore be true that the Applicant had no information about the details in the said green card. He stated that the affidavit in support of the said application is full of falsehood and that a draft amended plaint has not been annexed to the supporting affidavit. In conclusion the respondent stated that the application is mischievous, bad in law and filed in bad faith for the sole purpose of delaying the conclusion of this case.

I have considered with anxious care the affidavit evidence and the arguments by the parties. I have also considered the submissions of counsels.

It is trite law that applications for amendments of pleadings are freely given any time before judgment unless the opposite party will be prejudiced. The defendant has stated that this suit was heard and the plaintiff called their witnesses and even closed their case before Hon. Mr. Justice B.N. Olao was transferred to Bungoma Law Courts. When Hon. Mr. Justice Mukunya took over, he directed that the case be heard denovo.

I find that the defendant will not be prejudiced if the proposed amendment is allowed as the case was directed to be heard denovo. I also note that the plaintiff did not annex a draft amended plaint to the supporting affidavit. However failure to annex a draft amended plaint is not fatal to the application.

In any event, the Plaintiff/Applicant has disclosed the nature of the proposed amendment. The identity of the proposed defendants has been disclosed from the submissions by the Plaintiff/Applicant. I find no prejudice will be occasioned to the defendant and that the proposed amendment will enable the Court to determine the real issues in controversy effectively and with finality. In the result, I find the application dated 30thApril 2019 merited and the same is allowed in the following terms:

- 1) The Plaintiff/Applicant is granted leave to amend the plaint in terms of the facts contained in the supporting affidavit within 7 days from today.***
- 2) The defendant shall be at liberty to amend and file her defence within 14 days from the date of service thereof.***
- 3) The costs of this application shall be costs in the cause.***

READ DELIVERED AND SIGNED IN OPEN COURT AT KERUGOYA THIS 15TH DAY OF NOVEMBER, 2019.

.....

E.C. CHERONO

ELC JUDGE

15TH NOVEMBER, 2019

In the presence of:

- 1) Mr. Murigu for Plaintiff
- 2) Mr. Asimwe holding brief for Lucy Mwai for the Defendant