



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 534 OF 2017

JULIUS ONESMUS MWANGI & OTHERS.....PLAINTIFFS

VERSUS

THE ADMINISTRATORS OF THE ESTATE OF

LETOIRE OLE NTIRORI (DECEASED) & OTHERS.....DEFENDANTS

RULING

The application for determination is the Plaintiffs' Notice of Motion dated 31st May, 2017 brought pursuant to Order 8 Rule 3 & 5 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act and all the other enabling provisions of the law. The Plaintiffs seek leave to amend the Plaintiff so as to include the 3rd to the 23rd Plaintiff as Plaintiffs in the suit.

The application is based on the following grounds which in summary is that the Plaintiffs' intend to amend the Plaintiff to include all the other Plaintiffs herein and to include all the plots to enable the Court make a just and fair determination. The Plaintiffs intend to seek an order of demolition of any structures whether permanent or temporary erected on the said suit properties. The Defendants will not suffer any prejudice.

The application is supported by the affidavit of MIGUI MACHARIA MUNGAI who is the advocate on record for the Plaintiffs where he avers that there is need to include all plot owners of the suit properties as Plaintiffs' in this suit. He deposes that the included Plaintiffs had not been in the original suit as the two Plaintiffs in the original suit were acting as representatives. He claims this is not a representative suit and each Plaintiff should be given a chance to battle for their properties and it is in the interest of justice if leave was granted to amend the Plaintiff filed herein and include all plot owners in the suit. He confirms the Defendant will not suffer any prejudice by the proposed amendments.

The Defendants opposed the application for amendment and had previously filed a preliminary objection dated 4th November, 2015 stating that the suit violates the provisions of Order 1 Rule 3 of the Civil Procedure Rules and challenged the jurisdiction of the ELC Court to hear and determine this suit.

Both parties filed their respective submissions, which I have considered.

Analysis and Determination

Upon perusal of the application dated the 31st May, 2017 including the submissions, I find that the issue for determination at this juncture is whether the Plaintiffs should be granted leave to amend their Plaintiff and include plot owners in the suit herein.

The Plaintiffs contend that they seek to amend the Plaint to identify each plot with its owner and to include the owners as co – plaintiffs in the suit. They aver that the suit is not a representative one and it is pertinent that other plot owners should be enjoined as plaintiffs in it.

The Plaintiffs submit that the proposed amendments will narrow down and bring clarity to the issues for determination instead of filing a plethora of multiple suits all seeking the same reliefs from the same cause of action. The Plaintiffs relied on the case of **Bosire Ogeto Vs Royal Media Services Limited Civil Suit No. 292 of 2013** where the court allowed an amendment whose effect was to defeat a preliminary objection that had been lodged as to the limitation of time.

The Defendants relied on the case of **Samuel Kamau Macharia and Anor vs. Kenya Commercial Bank Limited and 2 others Application No. 2 of 2011 (eKLR)** where the Supreme Court held that **jurisdiction flows from either the Constitution or legislation or both. Thus a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.....'**

Order 1 Rule 1 of the Civil Procedure Rules states as follows: ' **All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.'**

Order 8 Rule 5 of the Civil Procedure Rules provides as follows: ' **(1) For purposes of determining the real question in controversy between the parties, or of correcting any defect or error in any proceedings, the court may either of its own motion or on the application of any party order any document to be amended in such manner as it directs and on such terms as to costs or otherwise as are just.**

(2) This rule shall not have effect in relation to a judgement or order.'

Section 13 (1) of the Environment and Land Court Act confers jurisdiction to the ELC and stipulates as follows:

(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

Section 13 (2) (c) & (d) further stipulates that ' in exercise of its jurisdiction under Article 162 (2) (b) of the Constitution, the Court shall have power to hear and determine disputes - (c) relating to land administration and management;

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land'

The above provisions are distinct in terms of jurisdiction of the Environment and Land Court. I note that the suit herein is about trespass and from the final prayers it is clear the orders sought are for a permanent injunction and eviction which fall within the ambit of the jurisdiction of the Environment and Land Court. The defect in the suit for including the 3rd Defendant who is deceased can be cured by the intended amendment.

According to section 19(1) of the Environment and Land Court Act it is clear that in any proceedings to which this Act applies, the Court shall act expeditiously, without undue regard to technicalities of procedure and shall not be strictly bound by rules of evidence. Further article 159 (2) (d) of the Constitution stipulates that ' **in exercising judicial authority, the courts and tribunals shall be guided by the following principles(d) justice shall be administered without undue regard to procedural technicalities.** In relying on these provisions, I decline to find that failure by the Plaintiffs' inclusion of the 3rd Defendant who is deceased in the suit instead of including its administrators renders

the whole suit defective and incompetent.

In the circumstances, I find that the Plaintiffs application dated the 31st May, 2017 is merited and proceed to allow it. The Plaintiffs are directed to file and serve the amended Plaint within fourteen (14) days from the date hereof. Upon service, Defendants are also granted leave of fourteen (14) days to file and serve amended Defences if need be.

The Costs of the application will be in the cause.

Dated signed and delivered in open court at Kajiado this 17th day of January, 2018.

CHRISTINE OCHIENG

JUDGE

Present:

c/c Mpoye

Ochako for Defendant

Ms Macharo holding brief for Mungai for Plaintiff