



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 384 OF 2016

SAMUEL RERIMOI KIMOSOP.....PLAINTIFF

VERSUS

NAOMI W. NJERI.....DEFENDANT

RULING

1. This ruling is in respect of plaintiff's Notice of Motion dated 27th June 2017 which seeks the following Orders:

1. Spent.

2. That this honourable court be pleased to grant leave to the plaintiffs/applicants to enjoin the 2nd – 4th defendant in the suit who are namely: the County Government of Nakuru, Commissioner of Lands and the District Land Registrar Nakuru.

3. That pursuant to prayer 1 being granted the plaintiffs/applicants be granted leave to further amend the plaint dated 21st August 2016 as per the annexed draft hereto.

4. That upon leave being granted the draft amended plaint annexed hereto be filed within a period of 45 days which is inclusive any documents or witness testimony to be filed therewith.

5. That costs of this application be provided for.

2. The application is supported by an affidavit sworn by the plaintiff. He deposed that it is necessary to join the County Government of Nakuru, Commissioner of Lands and District Land Registrar Nakuru as 2nd to 4th defendants respectively so that the dispute as to ownership of the suit property can be resolved finally. He added that it is in the interest of justice that the amendment be allowed.

3. The defendant opposed the application through a replying affidavit sworn on 19th September 2017. She deposed that the application does not disclose any cause of action against the proposed additional defendants and that it is therefore frivolous and vexatious. She added that the application is meant to delay the determination of the suit.

4. The application was argued by way of written submissions. The applicant filed his submissions on 4th October 2017 while the respondent filed her submissions on 6th November 2017. I have considered the application, the affidavits filed as well as the submissions.

5. The applicant seeks leave to amend the plaint so as to add three new defendants to the case. The respondent does not cite any specific prejudice that would be occasioned to her if the amendment is allowed. Instead, the respondent is attacking the merits of the applicant's case against the proposed additional defendants. Needless to state, that is a matter that will be determined at trial and will depend on what sort of defences the said defendants will file and the sort of evidence that the applicant will place before the trial court.

6. Order 8 rule 3 (1) of the Civil Procedure Rules 2010 provides:

Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.

7. Further, Order 8 rule 5 provides:

5. (1) For the purpose 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 judgment or order.

8. The application for amendment herein is made before the suit is set down for hearing. The general rule is that amendments sought before judgment should be allowed unless some prejudice which cannot be cured by an award of costs will be occasioned to the respondent. In the present case, I see no such prejudice which cannot be cured by an award of costs to the respondent. Consequently, I make the following orders:

a) The plaintiff is hereby granted leave to amend the plaint in terms of the draft amended plaint annexed to the affidavit in support of Notice of Motion dated 27th June 2017.

b) The amended plaint as well as any additional compliance documents by the plaintiff to be filed and served within 14 (fourteen) days from the date of delivery of this ruling.

c) The 1st defendant is granted corresponding leave to file and serve an amended defence as well as any additional compliance documents within 14 (fourteen) days of service of the amended plaint.

d) Costs of the application are awarded to the 1st defendant.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 28th day of February 2018.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Andama for the plaintiff/applicant

No appearance for the defendant/respondent

Court Assistants: Gichaba & Lotkomo