



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 251 OF 2016**

**GEORGE MAINA MICHAEL.....PLANTIFF**

**VERSUS**

**VITALIS KABITA .....DEFENDANT**

**RULING**

***(Application to adduce additional evidence; suit filed over land described as unsurveyed and unregistered land; plaintiff giving evidence; land later registered and given a parcel number; application to produce the new lease certificate; subject matter changed owing to registration of the land; direction that the plaint be amended to specifically plead the newly registered land; further directions to be given)***

1. The application before me is that dated 21 December 2017 filed by the plaintiff. The application is said to have been brought under the provisions of Sections 1A, 1B, 3A and 63 of the Civil Procedure Act, Cap 21, Laws of Kenya, and it principally seeks orders that the plaintiff be allowed to file additional documentary evidence, and the plaintiff be recalled to tender the evidence in court. The said application is opposed and before I go to the gist of it, I think that it is important that I give a little background on the same.

2. This suit was commenced through a plaint filed on 13 July 2016. In the plaint, the plaintiff has pleaded that on 24 May 1996, he was allotted by the Commissioner of Lands, the land described as Uns. Residential Plot No. 134 Gilgil. He pleaded that the land was later surveyed and the land was parceled as LR No. 30171 North East of Gilgil Township. It is pleaded that the plaintiff has been in possession since the year 1996 but that on 4 July 2016, the defendant emerged and claimed ownership of the said land. In the suit, the plaintiff has asked for the following prayers :-

*(a) A declaration that the plaintiff is the legitimate owner of Plot No. Uns Residential Plot No. 134 situated in Gilgil Township (now known as LR No. 30171 North East of Gilgil Township).*

*(b) A permanent injunction restraining the defendant by himself, his agents, servants and/or employees from trespassing, selling, wasting, intermeddling and/or interfering in any manner whatsoever with Plot No. Uns Residential Plot No. 134 situated in Gilgil Township (now known as LR No. 30171 North East of Gilgil Township).*

*(c) Costs of this suit.*

3. The defendant entered appearance and filed defence and counterclaim. He pleaded that he is the bona

fide owner of the land known as Gilgil S & S /2021 which he was allocated in the year 1996. He pleaded that it is the plaintiff who tried to take possession of it on 4 July 2016. In his counterclaim, he has asked inter alia for orders that he be declared the owner of the land that he described as Gilgil S & S/2021.

4. In as much as both parties claim land that is described differently, it is the same land on the ground.

5. Pre-trials were conducted and the hearing of the matter commenced on 8 November 2017 when the plaintiff testified. The plaintiff testified inter alia that he has the allotment letter to the said unsurveyed plot No. 134 and further testified that this plot is now identified as LR No. 30171.

6. In this application, the plaintiff avers that on 4 December 2017, he became registered as owner of the leasehold title comprised in the suit land and that the suit land is now identified as Gilgil Township Block 5/2. He wishes to be allowed to produce the said lease and certificate of lease as evidence to support his case.

7. In opposing the application, the defendant has sworn a replying affidavit, vide which he has inter alia deposed that the application should not be allowed for the reason that the plaintiff has not made good a previous order on costs; that Section 63 of the Civil Procedure Act, Cap 21, which is relied on does not provide for filing of additional documents or for recall of a witness; that the evidence sought to be introduced did not form part of the court record at the time the plaintiff testified; and that the integrity of the documents is questionable.

8. I took in the submissions of Ms. Onyango, learned counsel for the applicant, and Mr. Kabita, learned counsel for the respondent, and I have considered these in my ruling.

9. The application is brought pursuant to the provisions of Sections 1A, 1B, 3A and 63 of the Civil Procedure Act. These are fairly general provisions which invite the court to exercise its inherent jurisdiction to make such orders as are deemed fit given the circumstances presented. They are not specific in addressing the issue at hand, which is production of additional evidence. To me, it doesn't really matter, whether or not the applicant has narrowed down on a specifically applicable provision of the law, for it is clear to me, and indeed to the respondent, what the applicant wants. The applicant avers that he has now obtained title to the suit land and wishes to produce this title to support his case. The said title was issued on 4 December 2017 and of course could not have been available when the plaintiff testified on 8 November 2017. Neither could the document be discovered before hand during the pre-trial conference.

10. I have no problem with the plaintiff adducing the additional evidence since it is going to assist in determination of who is entitled to the land in question. However, it is apparent to me that what the plaintiff claims to now hold is an actual lease over registered land. This land is not what is indicated in his pleadings. If the land has now been registered, then the plaint needs to be amended so that the claim is specifically directed at the land as registered. It simply means that we will need to go a little back, but I think that it is important and just that we do so, given that the subject matter of the suit can now be specified with precision. I am aware of Mr. Kabita's complaint that the plaintiff has not made good orders of costs that I made on 8 November 2018 which indeed must be complied with.

11. Given the above, I now make the following orders :-

**(i) The plaintiff is given leave to amend his plaint so as to make specific that his claim is over the land parcel Gilgil Township Block 5/2.**

**(ii) That the amended plaint be filed and served alongside all supporting documents and statements within 14 days from today.**

**(iii) That upon service, the defendant is at liberty to amend his defence within 14 days of service.**

12. That I will give further directions on how to proceed on a date to be specified at the delivery of this ruling.

13. On costs, since the application has been necessitated due to change in the registration of the land, I make no orders, save that the plaintiff must make good the orders of costs made on 8 November 2018 within 14 days from today.

14. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 15<sup>th</sup> day of February 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of :-**