



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.28 OF 2016

PHILIP KAMAU GACHUNU (Suing as a Beneficiary and

Administrator of the Estate of Kamau Gachunu(Deceased) ...**PLAINTIFF**

VERSUS

ALICE WANJIRU.....1ST DEFENDANT

MARY KARANJA.....2ND DEFENDANT

SAMMY NJUGUNA.....3RD DEFENDANT

OCS-MUTAITA POLICE STATION.....4TH DEFENDANT

LAND REGISTRAR, NAKURU.....5TH DEFENDANT

ATTORNEY GENERAL.....6TH DEFENDANT

RULING

(Application for leave to amend plaint; plaintiff inter alia wishing to amend to include a prayer for cancellation of title but not proposing to sue the owner of the said title; directions issued that if the plaintiff wishes to maintain the order of cancellation of title, then he must sue its holder as a defendant in the amended plaint; subject to the directions, application for amendment is allowed)

1. The application before me is that dated 23 August 2017 filed by the plaintiff. The application is brought pursuant to the provisions inter alia of Order 1 Rule 10 and seeks leave to amend the plaint. I have gone through the application which was not opposed.

2. I note that in the original plaint filed on 8 February 2016, the plaintiff pleaded that he inherited the land parcel Kiambogo/Kiambogo Block 2/ 485 (Mwariki) (hereinafter referred to as "the suit land") from his late father, one Kamau Gachunu (deceased). He pleaded that the 1st, 2nd and 3rd defendants and their families, have invaded the suit land. He pleaded that despite reporting to the OCS- Mutaita police station, sued as the 4th defendant, the 4th defendant did nothing about it.

3. The 1st, 2nd and 3rd defendants filed a joint defence and counterclaim. They inter alia denied that the plaintiff owns the suit land . They pleaded that they are members of a trust known as Muungano wa Wanavijiji Akiba Mashinani Trust and that by an agreement dated 23 December 2010, the said Trust purchased the suit land for purposes of settling its members. They averred that the suit is bad in law for misjoinder.

4. In this application, I have seen that the plaintiff wishes to add that the deceased died on 30 March 2005 and that succession proceeding over his estate were concluded and a confirmed grant issued on 17 September 2005 and further that the suit land is now registered in the name of the plaintiff. I have also seen that among the prayers that the plaintiff wishes to add, are for an order of cancellation of a title issued on 10 March 2011 to Muungano Wa Wanavijiji Akiba Mashinani Trust.

5. In as much as the application is not opposed, it does not mean that I must allow it and permit the plaintiff to amend his plaint in the fashion that he has demonstrated. I believe that is why before proceeding to amend, it is necessary for the court to grant leave, so that the amendment sought is acceptable in the circumstances of the case.

6. In this case, through the amendment, the plaintiff seeks cancellation of a title of a person or entity, without the plaintiff intending to sue the

holder of the said title. To me, that will be improper. If the plaintiff wishes to cancel a title which he himself acknowledges was issued to Muungano Wa Wanavijiji Akiba Mashinani Trust, then he must sue this entity so that the said entity can have an opportunity to defend its title.

7. It is therefore my direction that if the plaintiff still wishes to have the order of cancellation of title in the amended plaint, then in the amended plaint, he needs to include the holder of that title as a defendant. If he does not wish to sue the holder of the said title, then I am unable to allow him to amend the pleadings to include the order of cancellation of title.

8. Thus, I do give leave to the plaintiff to amend his plaint but subject to the above directions and the amended plaint be filed within 14 days from today.

9. I make no order as to costs.

10. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 7th day of February 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Mr. Kagucia for the defendants

No appearance on the part of M/s Kinoti & Kibe for the plaintiff/applicant.

Court Assistant : Nelima Janepher

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU