



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC JUDICIAL REVIEW APPLICATION CASE NO. 02 OF 2018

REPUBLIC.....APPLICANT

VERSUS

MINISTER OF LANDS, HOUSING,

PHYSICAL PLANNING & SETTLEMENT.....1ST RESPONDENT

DISTRICT LAND ADJUDICATION & SETTLEMENT

OFFICER MERU SOUTH/MAARA SUB COUNTY.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

MUTUA MUGAMBI AREWA.....INTERESTED PARTY

WERU TEA FACTORY

COMPANY LIMITED.....2ND INTERESTED PARTY

GILBERT MUCHIRI NGAINE.....EX-PARTE APPLICANT

RULING

1. This application is dated **29th March, 2018** and seeks orders:

1. That the court be pleased to grant leave to the ex-parte applicant to amend the 1st respondent's name to read CABINET SECRETARY OF LANDS AND PHYSICAL PLANNING instead of MINISTER OF LANDS, HOUSING, PHYSICAL PLANNING AND SETTLEMENT.

2. That if prayer 1 is granted the alteration be effected accordingly in the ex-parte applicant's pleadings.

3. Costs of this application be provided for.

2. The application is supported by the affidavit of GILBERT MUCHIRI NGAINE and has the following grounds:

a) That the findings, ruling and judgment of ABRAHAM KEMBOI delivered on **16th November, 2017** by ABRAHAM KEMBOI was delivered for and on behalf of the MINISTER OF LANDS, HOUSING, PHYSICAL PLANNING AND SETTLEMENT as he was then referred.

b) That after the 2010 constitution the ministers changed their titles to cabinet secretaries.

c) That inadvertently the ex-parte applicant named the cabinet secretary for LANDS AND PHYSICAL PLANNING as the MINISTER OF LANDS, HOUSING, PHYSICAL PLANNING AND SETTLEMENT.

d) That the mistake was inadvertent and it amounted to a misjoinder of a party which can be cured by order 1 rule 9 and 10 of the civil procedure rules either on application or on the court's own motion.

e) That this is a technicality that can be cured by article 159 (2) (d) of the constitution which provides that justice shall be administered without undue regard to procedural technicalities.

f) That no party stands to suffer any prejudice if the orders sought are granted.

g) That the orders sought are necessary if the real parties and facts are to be brought before the court for proper adjudication and administration of justice.

3. During interpartes hearing on 17.4.2018, it transpired that the application was not opposed.

4. I note that the application seeks to substitute the Minister with the Cabinet Secretary in accordance with the dispensation spawned by the Constitution of Kenya, 2010.

5. In the circumstances, the application is allowed.

6. Costs shall be in the cause.

7. It is so ordered.

Delivered in open court at Chuka this 17th day of April, 2018

in the presence of:

CA: Ndegwa

I.C. Mugo for the Exparte Applicant

Muriithi for 2nd Interested party

P.M. NJORGE

JUDGE