



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC 471 OF 2010

LILIAN WANJERI NJATHA.....PLAINTIFF

=VERSUS=

SABINA WANJIRU KUGURU.....DEFENDANT

RULING

1. This is a ruling in respect of Notice of Motion dated 12th October 2017 in which the applicant seeks leave to amend the plaint and join a party to the suit as a defendant. The applicant contends that she is the beneficial owner of plot No.12 Bahati Annex . The applicant had filed a suit against the respondent seeking a declaration that she is the lawful owner of plot No.12 Bahati Annex. When she commissioned the services of the City County Surveyor, it was established in the report by the surveyor that plot No.12 Bahati Annex was actually part of LR No.209/13403 which is registered in the name of the deceased husband of the respondent.

2. The applicant therefore contends that the allocation of her land which was annexed into the respondent's land was unprocedural hence the need to amend the plaint and seek cancellation of the respondent's title and bring in the National Land Commission which is the successor of the office of the defunct Commissioner of Lands.

3. The respondent has opposed the applicant's application based on a replying affidavit sworn on 27th October 2017, grounds of opposition filed on 27th October 2017 as well as preliminary objection filed on 23rd November 2017. The respondent contends that the applicant lacks locus standi to bring the present suit as well as the notice of motion dated 13th October 2017; that the application is fatally defective, is incompetent and is otherwise an abuse of the process of the court.

4.The respondent further contends that the application has been brought after inordinate delay; that a surveyor's report is no evidence of ownership; that the respondent has built apartments on the suit property which apartments received approval from the county Government. The respondent further states that there is no legal basis for enjoining the National Land Commission and that the intended amendments will cause prejudice to her as she has built in the contested plot and has been in occupation for over 18 years.

5. I have carefully considered the applicant's application as well as the opposition thereto by the respondent. I have also considered the submissions filed by the parties herein. The issues which emerge for determination are firstly whether the applicant has locus to bring the suit as well as the application. Secondly, whether the amendments sought should be granted and lastly whether the National Land Commission should be enjoined in this suit.

6. On the issue of locus standi, the respondent contends that the applicant should have brought the suit as the administrator of her late husband who was the allottee of plot No.12 Bahati Annex . This point is being raised as a preliminary objection. The law is clear that a preliminary objection cannot be raised where certain facts need to be ascertained. See **Mukisa Biscuits Manufacturing Company Ltd Vs Westend Distributors Ltd (1969)EA 696.**

7. On the issue of amendments or joinder the guiding principles in an application for leave to amend is that all amendments should be freely allowed at any stage of the proceedings, provided that the amendments or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot be properly be compensated in costs. See **Central Kenya Ltd Vs Trust Bank Ltd & 5 Others (2000) eKLR.**

8. In the instant case, the applicant is seeking to amend the plaint to seek for an order of cancellation of title. The basis for this is that in her view, the title now registered in the name of the respondent's husband was fraudulently obtained. The title which was allegedly fraudulently issued was issued by the office of the defunct commissioner of lands whose functions were taken over by the National Land Commission. whether or not there are apartments on the suit property should not be a consideration for either grant or refusal of the leave sought . The consideration is whether the amendments sought will prejudice the respondent. It is necessary for the court to allow such amendments so that the truth of the matter can come out. The truth cannot come out unless the National Land Commission who are the custodians of records of

how public land was allocated are not brought on board.

9. The applicant's application is neither incompetent nor an abuse of the process of the court. Delay in bringing this application is understood. The application was brought after a survey revealed that plot No.12 Bahati Annex is within LR No.209/13403 and this application would not have been brought earlier than the time it was brought. I therefore find that the application is well merited. I allow the same as prayed. An amended plaint should be filed within 14 days from the date hereof.

It is so ordered

Dated, Signed and delivered at Nairobi on this 24th day of May 2018.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the date and time of delivery of ruling.

Court Assistant: Kevin

E.O.OBAGA

JUDGE