



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO. 401 OF 2016**

**DAVID GATHII MUGWERU, MICHAEL MUTURI WAWERU AND GRACE MUKAMI**

**MACHARI** (*Suing in their capacity as the Chairman, Secretary and Treasurer of WAZEE*

**PAMAOJA SELF HELP GROUP)**.....**PLAINTIFF**

**Versus**

**MUKENIA FARMERS CO-OPERATIVE SOCIETY LTD)**.....**DEFENDANT**

**RULING**

**(Application for amendment of plaint; application allowed).**

1. The application before me is that dated 22 January 2018 filed by the plaintiffs. The application is brought pursuant to the provisions inter alia of Order 8 Rule 3 (1) of the Civil Procedure Rules and the principal order sought is for leave to amend the plaint.

2. The original plaint was filed on 27 September 2016 against Mukenia Farmers Co-operative Society Limited. It is pleaded that the plaintiffs are the lawful and legal owners of the land parcels Gilgil/Gilgil Block 1/16109 to 16147, each measuring approximately 2.151 Ha. It is pleaded that in the month of February 2012, the plaintiffs entered into an agreement with the defendant to purchase 100 acres out of the land LR No. 11106 in Gilgil, and that pursuant to the said agreement, the plaintiffs took possession of 90 acres of the said land and have paid survey fees for processing of titles. It is averred that upon survey, the suit properties were created and title deeds processed. It is pleaded that despite making all payments, the defendant has refused to surrender the title deeds to the plaintiffs. In the suit, the plaintiffs have asked for orders of a declaration that they are the rightful owners of the land parcels Gilgil/Gilgil Block 1/ 16109 - 16147 and for a permanent injunction against the defendant over the said parcels of land.

3. Through this application, the plaintiffs wish to amend their plaint so as to add 13 more defendants. I have seen the draft amended plaint annexed to the application, and I do observe that in the said draft, the plaintiffs wish to plead that some of the claimed properties have now been transferred to the new proposed defendants. It is proposed to be pleaded, that the transfer to the intended new defendants was inter alia fraudulent, and the plaintiffs wish to add a prayer for the cancellation of their title deeds.

4. I have considered the application. Courts are generally liberal when it comes to amendments so long as the same do not go to prejudice the other parties to the litigation. I do note that this case is yet to commence, and I see no prejudice which will be caused, either to the existing defendant, or to the new intended defendants. They will all have a chance to contest the claims in the amended plaint and the prayers sought therein.

5. I therefore allow the application for amendment of the plaint as prayed by the plaintiffs. I order that the amended plaint be formally filed within 14 days and be served in the usual manner.

6. I make no orders as to costs.

7. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 3<sup>RD</sup> day of May 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Ms. B. Wangari for the plaintiff/applicant.

Mr. Murunga holding brief for Mr. Olonyi for the defendant/respondent.

Court Assistant : Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**