



**REPUBLIC OF KENYA**

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

**E & L CASE NO. 955 OF 2012**

**DANIEL KIMONGONY KUTO.....PLAINTIFF**

**VERSUS**

**CHARLES MAINA NJUGUNA.....1<sup>ST</sup> DEFENDANT**

**DISTRICT LANDS REGISTRAR (UASIN GISHU DISTRICT)...2<sup>ND</sup> DEFENDANT**

**COMMISSIONER OF LANDS.....3<sup>RD</sup> DEFENDANT**

**HON. ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT**

**RULING**

The application before court is dated 31.10.2017 and seeks orders that the case be re-opened and the plaintiff be allowed to amend the plaint as per the annexed amended plaint. The application is based on grounds that the amendment will assist the court to resolve the issues in controversy once and for all. The intended amendment will meet the orders of justice and fair play. No prejudice will be suffered by the defendants.

The application is opposed by the defendants on the grounds that the suit has been pending in court since the year, 2008. The application is filed on the day of highlighting submissions after the plaintiff realized that he has no case. The plaintiff seeks to introduce herein issues during submissions and he is guilty of laches.

I have considered the submissions of the plaintiff and the submissions of the 1<sup>st</sup> defendant and do find that though the law allows amendment to be made at any stage, before judgment is made, the application for amendment herein intends to bring in a new party at the stage of highlighting submissions.

In essence, this case has been fully heard by way of written submissions and therefore, any amendment of the plaint will prejudice the defendants. Moreover, what is sought to be introduced as an amendment is a prayer that a declaration that proceedings before the Land Disputes Tribunal were incompetent are incapable of enforcement and the setting aside of the decree in Eldoret Chief Magistrate's Court Award No. 27 of 2003. This prayer seeks to challenge a decision of the court that has been reduced to a decree. The Award of Elders and judgment of court should have been challenged by way of either Judicial Review or an appeal to the Appeals Committee and not by way of a declaratory suit. The amendment intends to introduce matters that have been determined by other courts and therefore are likely to prejudice the respondents. The application lacks merit and is dismissed with costs.

**Dated and delivered at Eldoret this 28<sup>th</sup> day of June, 2018.**

**A. OMBWAYO**

**JUDGE**