



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

E.L.C NO 68 OF 2011

JULIUS BUNDI RIMBERE.....PLAINTIFF/APPLICANT

VS

ISABELLA MWENDWA M'ANGAINE.....DEFENDANT/RESPONDENT

RULING

1. This ruling is in respect to a Notice of Motion dated 29/1/18 and filed on 30/1/18 seeking the following orders;

- a) That the Honourable Court be pleased to grant the Plaintiff/Applicant leave to amend his plaint in terms of the amended plaint annexed hereto within 7 days.
- b) That upon grant of prayer 1 above, this Honourable Court be pleased to open the Plaintiff's case to enable the Plaintiff tender further evidence in the interests of Justice.
- c) That costs of the application be in the cause.

2. The application is premised on the grounds that the pleadings in the suit have closed and for the Court to properly determine the real issues in controversy between the parties, it is necessary for the Plaintiff to amend the plaint.

3. In his Supporting Affidavit sworn on 29/1/18 the Plaintiff averred that there is evidence in respect to properties that he inadvertently left out to enable the Court reach a fair determination of the case. He urged the Court not to close the door of justice at the point of the proceedings but to allow him to ventilate his case further. That he omitted by error to include evidence on KAZ 477R and LR No.Nyaki/Kithoka/2574 which are part of the properties. He attached a draft amended plaint.

4. On the 31/10/17 both parties concluded the hearing of the case and the Court directed parties to mention the matter before the DR on 30/11/17 to confirm filing of written submissions.

5. However on the 29/1/18 the Plaintiff filed the Notice of Motion which is the subject of this ruling. On the 13/3/18 the parties represented by their Learned Counsels on record agreed to canvass the application by way of written submissions. The parties confirmed that the application had been served on the Defendant who was said to have responded.

6. I have perused the file and fail to see any response to the application. Relying on the proceedings on 13/3/18 I shall deem it that the application was served on the Defendant and have elected not to oppose it.

7. Amendment of pleadings is governed by order 8 rule 3(1) and Rule 5 of the Civil Procedure Rules which provide as follows:-

3(1) "Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the Court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings".

5 (1) "When a suit has been filed a summons shall issue to the Defendant ordering him to appear within the time specified therein".

5(2) " Every summons shall be signed by the judge or an officer appointed by the judge and shall be sealed with the seal of the Court without delay, and in any event not more than thirty days from the date of filing suit".

Any stage of proceedings includes even where the hearing was closed. The Constitution under Article 159 (2) (d) enjoins this Court to dispense substantive justice without undue technicalities. I see no prejudice to the Defendant that cannot be compensated by costs if the application is allowed.

8. The application being unopposed it is granted as prayed. I make the following orders;-

- a) The Plaintiff is hereby granted leave to amend his plaint in terms of the draft attached to the Notice of Motion dated 29/1/18.
- b) The amended plaint to be filed and served within 15 days of this ruling.
- c) The Defendant is at liberty to file and serve amended pleadings within 15 days of service of the amended plaint.
- d) The hearing of the cases shall be reopened for purposes of adding further evidence in respect to LR No. Nyaki/Kithoka/2574 and M/V KAS 477R and for cross-examination of the Plaintiff with regard to the same and any new matters contained in the amended plaint.
- e) Costs shall be in the cause.

DATED, DELIVERD AND SIGNED AT MERU THIS 28TH DAY OF JUNE, 2018.

J.G. KEMEI

JUDGE

In the presence of:

Ms. Muna holding brief for Mwanzia for Plaintiff/Applicant

Kiogora holding brief for Ms. Nelima for Defendant/Respondent