



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO.135 OF 2016**

**STELLA C. TALAM.....1<sup>ST</sup> PLAINTIFF**

**LINDA ROTICH .....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JOHN K. ROTICH.....DEFENDANT**

**RULING**

***(Application to amend plaint to include an additional person as defendant; plaintiff claiming certain land from original defendant; the land now transferred to the person sought to be enjoined as co-defendant; application allowed).***

1. The application before me is that dated 4 July 2017 filed by the plaintiffs. The applicant seeks orders for leave to be allowed to enjoin one George Kimani Kariuki as 2nd defendant in this suit.

2. The suit itself was commenced through a plaint filed on 21 April 2016 against one defendant, John K, Rotich. In the plaint, it is pleaded inter alia that the 1st plaintiff is wife to the named defendant whereas the 2nd plaintiff is his daughter. It is pleaded that during the marriage between the 1<sup>st</sup> plaintiff and the defendant, they acquired the land parcel Nakuru Municipality Block 20/320 which they leased out in order to raise school fees for their son. It is averred that it was the intention of the parties that the property will be registered in the joint names of the 1st plaintiff, or jointly between the 1st plaintiff, the defendant and their son. The plaintiffs filed suit when they got wind that the defendant intended to sell the suit property to the tenant residing in the suit land, and in the plaint, they sought orders to have the defendant permanently restrained from selling the said land and the land parcel Chagaiya Settlement Scheme Plot No. 172.

3. In this application, the plaintiffs now wish to amend the plaint to add the said George Kimani Kariuki, as it has emerged that the land parcel Nakuru Municipality Block 20/320 has now been sold to him. In the supporting affidavit, the plaintiffs have annexed a search of the property which shows that indeed the property is now in the names of the proposed 2nd defendant having acquired title on 11 April 2016. I have however not seen any draft of what is supposed to be amended, but be that as it may, I see no reason why I should decline to grant leave to the plaintiffs to amend their pleadings. It is clear to me that the character of one of the land parcels in dispute has changed through a sale and transfer, and it is necessary for amendments to be effected to reflect this changed position. I see no prejudice which will be caused to either the existing defendant or to the new defendant as they will have a chance to defend any claim that may be preferred against them.

4. I therefore allow this application and permit the plaintiffs to enjoin George Kimani Kariuki as 2nd defendant to this suit. I further direct the plaintiffs to amend their plaint within 14 days from today and proceed to serve it in the usual manner.

5. I make no orders as to costs.

6. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 28<sup>th</sup> day of June 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of: -**

Ms. Ogame instructed by M/s Konosi & Co. Advocates for the plaintiff/applicant.

No appearance for the defendant/respondent.

Court Assistant :Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**