



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 117 OF 2012

KARANJA MUTITU & 19 OTHERS.....PLAINTIFFS

VERSUS

KIHOTO COMPANY LIMITED.....1ST DEFENDANT

NAIVASHA MUNICIPAL COUNCIL.....2ND DEFENDANT

RULING

(Applications for amendment of pleadings; applications not opposed; applications allowed).

1. There are two applications before me. The first is dated 15 February 2018 filed by the plaintiff seeking leave to amend the plaint and the second is that dated 19 February 2018 filed by the 1st defendant and seeking leave to amend the counterclaim.
2. The suit itself was commenced through a plaint filed on 19 February 2006. There are twenty named plaintiffs who have averred that they are shareholders of the 1st defendant, and that by virtue of their membership, they have shares in the land parcel LR No. 12079 situated in Naivasha town, which land is said to have been purchased by the 1st defendant from Alfafa Limited. It is pleaded that this land was subdivided to members, save for 64 acres which were subdivided into plots, and which were balloted for by the plaintiffs. It is the contention of the plaintiffs that the 1st and 2nd defendant (Naivasha Municipal Council) have colluded to fraudulently take away their plots by claiming that the same is public land and have colluded to re-allocate them to non-members. In the suit, the plaintiffs have asked for a declaration that they are the persons entitled to the plots arising out of a subdivision of the suit land.
3. I have seen that what the plaintiff wants to do, if granted leave to amend, is to add four more defendants, being, the County Government of Nakuru, the District Land Registrar Naivasha, the Chief Land Registrar, and the Attorney General. It is further sought to be pleaded that the 2nd and 3rd defendants have claimed that the 64 acres in issue is public land and have denied the plaintiffs its use and occupation.
4. On behalf of the 1st defendant it is sought to be pleaded that the 1st defendant is owner of the 64 acres in issue and for a declaration that the 1st defendant is entitled to subdivide and allot the same to the 20 plaintiffs herein.
5. Courts are usually liberal when it comes to granting parties leave to amend. This matter has barely started as the plaintiff's witness was stood down during his examination in chief. I therefore see no prejudice which will be caused to any party if I am to allow the amendments. As far as I can see, the amendments do not bring in a new cause of action and can be permitted.
6. I therefore allow the two applications for amendment and direct that the same be filed and served in 14 days. I make no orders as to costs.
7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 20th day of June 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Ms. Kiberenge holding brief for Mr. Orege for the 2nd defendant.

No appearance on the part of counsel for the plaintiffs and 1st defendant.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU