



**Demo v Ondoro & 4 others (Environment & Land Case E004 of 2022) [2024] KEELC 498 (KLR) (30 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 498 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE E004 OF 2022**

**JM KAMAU, J  
JANUARY 30, 2024**

**BETWEEN**

**MICHAEL MOTURI DEMO ..... PLAINTIFF**

**AND**

**RHODA MONG'INA ONDORO ..... 1<sup>ST</sup> DEFENDANT**

**JOHNSTONE NYANYUKI MENGE ..... 2<sup>ND</sup> DEFENDANT**

**JAMES ONGERA KEMONI ..... 3<sup>RD</sup> DEFENDANT**

**HELLEN ACHINGA MAKORI ..... 4<sup>TH</sup> DEFENDANT**

**YUNES BOERA NYAMWANGE ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff moved this court and sought for Judgment against the Defendants for: -
  - a. A declaration that the Plaintiff's father had validly produced a portion of parcel of land measuring 34.5 Acres in Plot No. 11 Gesima Settlement Scheme that was later amalgamated and became Plot 2 Gesima Settlement Scheme.
  - b. A declaration that the Plaintiff is a beneficiary of the estate of the late Stanley Ongoro Baraya and therefore entitled to a portion measuring 34.5 Acres forming part of parcel virtue of the sale done to Joseph Zachary Onduko prior to his demise/death with reference to Land Parcels Gesima Settlement Scheme/337/338,339,342 and 343 that have been hived from Plot 2 Gesima Settlement Scheme.
  - c. An order for cancellation of all the subordinates arising from Plot 2 Gesima Settlement Scheme and in particular 337, 338, 339, 341, 342 and 343.



- d. That the Administrators of the estate of Stanely Ongoro Baraya be compelled to execute the transfer documents in favour of the Plaintiff to hold in trust on behalf of the estate of Joseph Zachary Onduko a portion measuring approximately 34.5 Acres from Plot 2 Gesima Settlement Scheme and in default, the Executive Officer do sign/execute the transfer document to effect the transfer in favour of the Plaintiff.
  - e. Damages – general, compensating, exemplary and aggravated damages.
2. In the suit, the Plaintiff did not include the particulars of sub-divisions which he now wishes to include should he be granted leave to amend the Plaintiff.
  3. The suit is defended. The Applicant states that the intended amendment is meant to have the court determine the real Questions in controversy between the parties. He also depones that he requires to include additional parties in the suit. But he doesn't say who the additional parties are. But there are two new Defendants Peter Ntereba and Hellen Achinga Makori shown in the Amended Plaintiff. The only substantive amendments shown in the draft amended Plaintiff are the particulars of sub-divisions.
  4. The Defendants however opposed the Application through the 2<sup>nd</sup> Defendant Johnstone Nyanyuki Menge who swore an Affidavit on 10/11/2023 in addition to the Grounds of Opposition dated 9/10/2023. In the Grounds of Opposition, the 2<sup>nd</sup> Defendant states that the Application is premature, misconceived and bad in law; the amendments sought have always been within the knowledge of the Plaintiff and that there has been inordinate delay in filing the Application.
  5. In the Replying Affidavit, the 2<sup>nd</sup> Defendant depones that if the draft Amended Plaintiff is allowed then it will amount to the striking out of the 5<sup>th</sup> Defendant who is the registered owner of LR No. Gesima Settlement Scheme/342, a subsequent sub-division of LR. No. Gesima Settlement Scheme/2, the subject of the suit. This sparks bad faith and that the 5<sup>th</sup> Defendant had been represented by the firm of Bosire Gichana & Co. Advocates in another matter Nyamira ELC No. 60 of 2021. Finally, the 2<sup>nd</sup> Defendant depones that the amendment is meant to change the cause of action in the suit and the same should be disallowed.

The other Defendants did not respond to the Application.

6. As to whether the firm of Bosire Gichana & Co. Advocates is conflicted in this matter, the issue is not before the court at the moment. The only issue before the court by virtue of the Application dated 30/6/2023 is whether the amendments of the Plaintiff sought should be allowed or not.
7. Although an Amendment to a pleading is allowable at any stage of the suit, the main principle to consider is whether the amendments sought are necessary for the determination of the real issues in controversy in the suit. I also wish to add that amendments should be allowed so that there is no need to file another suit with issues that have been in the current suit and which if brought in a latter suit, the same would be rendered res judicata. This enables the parties to bring all their merchandize under one roof and avoid multiplicity of suits. However, the said wind of opportunity should not be abused e.g. by changing or altering the substratum of the suit or by striking out relevant parties to the suit.
8. Before me is a unique Application. I don't agree with the 2<sup>nd</sup> Respondent that the Application has been brought with inordinate delay since the matter has not even been set down for hearing. But I do agree with him that before me the amendments sought are questionable in that the Applicant intends to drop a very crucial party in the suit. Secondly, a new party, Peter Ntereba is being introduced in the suit without being notified of such intention. To the extent that these two amendments are sought I would agree that the Applicant is intent on abusing the process of this court. But in as far as leave to



particularize the subdivisions is concerned, the same is not mischievous and/or an abuse of the process of the court and the same should be allowed.

9. The upshot of the above is that the Plaintiff is granted leave to amend the Plaint in accordance with the Draft Amended Plaint attached to his Supporting Affidavit sworn on 20/6/2023 save that the parties should remain as they have always been without any additional party and/or dropping of any of the parties in the suit. These are the orders of the court.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 30<sup>TH</sup> DAY OF JANUARY 2024.**

**MUGO KAMAU**

**JUDGE**

In the presence of: -

C/A: Brenda

Plaintiff: No appearance

Defendant: 2<sup>nd</sup> Defendant present in person

