



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA IN BUSIA

LAND & ENVIRONMENTAL DIVISION

ELC NO. 128 OF 2015

STEPHEN EKAYA EROMOTO.....PLAINTIFF

VERSUS

LETISA NAFULA OMOLO.....DEFENDANT

R U L I N G

1. The application under consideration is a Notice of Motion dated 23/5/2017 filed here on the same date (according to a copy of receipt filed together with it). But it was erroneously court-stamped 26/2/2015, thus creating the wrong impression that it was filed even before the suit herein was filed. (The suit was filed on 5/11/2015). The application is brought under Order 8 Rule 3 and Order 51 Rule 1 of Civil Procedure Rules.

2. The Applicant – **STEPHEN EKEYA EREMOTO** – filed the application against the Respondent – **LETISA NAFULA OMOLO** – and is seeking the following orders:

1. That leave be and is hereby granted to the Applicant to amend his Originating Summons.
2. That costs of the application be provided for.

3. From the application, it is clear that the Applicant wants to amend the Originating Summons because Land Parcel No. **BUKHAYO/BUGENGI/11652** over which he is disputing with the Respondent has now mutated into Land Parcels L.R. **BUKHAYO/BUGENGI/12259** and L.R. **BUKHAYO/BUGENGI/12260**. These two new land parcels have two new owners – **PATRICK AMOGUNA MATENDECHERE** and **WILFRED OMUKALA THUMA**. The amendment sought is meant to capture this information.

4. The Respondent has opposed the application vide a replying affidavit filed here on 19/9/2017. According to her, the application is incurably defective and should be dismissed. She says the two new land parcels mentioned by the Applicant do not belong to her.

5. The application was canvassed by way of written submissions. The Applicant's submissions were filed on 13/10/2017. The Applicant submitted, *inter alia*, that the Court has wide powers to allow amendment. The need to incorporate new parties and some new information into the suit was stressed. The subdivision of the resultant parcels to two parcels was said to be "a ploy to hoodwink the court and all concerned".

6. The Respondent's submissions were filed on 30/10/2017. It appears clear that the Respondent views the application as one merely meant to add two new parties. According to the Respondent, the application should then have been brought under Order 1 Rules 1, 2, or 14, not Order 8 Rule 3 or Order 51 Rule 1 of Civil Procedure Rules. And according to the Respondent too, the intended two new persons should have been served.

7. I have considered the application, the response made, rival submissions, and the other pleadings on record. It is not true, as suggested by the Respondent, that the amendment is solely to add two new parties. One only needs to look at the draft amended originating summons. True, there are two new parties added. But there is also a lot of other information added to the body of the application capturing details that were not included in the initial application.

8. The court does not also agree with the Respondent that the two new parties should be served at this stage. As things stand, the suit is at this stage between the Applicant and the Respondent. It is still in the early stages. The two new parties will have time to object to their inclusion once they are brought on board. I need to observe here that as of now, the two new persons proposed to be enjoined seem to be necessary parties. The Respondent has no mandate to purport to speak for them.

9. It is important to appreciate that the powers to allow amendment are granted to courts to prevent the failure of justice due to procedural errors, mistakes, or defects. The powers are meant to serve the ends of justice. They are also aimed at making the functions of the court more effective by ensuring that the focus is on the substantive merits of the case. The ultimate objective of amendment is to ensure that the parties alter their pleadings so as to ensure that the litigation between them is conducted not on the false hypothesis of the facts already pleaded or the relief already claimed, but rather on the basis of true state of affairs or facts or the true remedy being sought.

10. The application herein is brought for good reasons. It would be wrong to disallow it as that would lead to omission of crucial information that may ultimately help the court to deliver justice on merits. It also may lead to shutting out parties whose say or input in this case is necessary. The application is therefore found meritorious and is hereby allowed.

Dated, signed and delivered at Busia this 24th day of July, 2018.

A. K. KANIARU

JUDGE

In the Presence of:

Plaintiff:

Defendant:

Counsel of Plaintiff:.....

Counsel of Defendant:.....