



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KENYA

ELC CAUSE NO. 277 OF 2017

FORMERLY KISII ELC NO. 273 OF 2012

OLOISIRIRI KARDALE & 31 OTHERS.....PLAINTIFFS

-VERSUS-

THE DISTRICT LAND ADJUDICATION

& SETTLEMENT OFFICERS AND 2 OTHERS....DEFENDANTS

RULING

(Application dated 10th July, 2017)

The Application before me is the Notice of Motion dated 10th July, 2017 seeking leave to be granted to Plaintiffs/Applicants to enjoin and add 56 more proposed defendants and remove 2nd, 7th, 11th, 12th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 26th and 27th plaintiffs. The Applicants also sought for leave to amend the plaint dated 11th April, 2013 and to effect service of the said plaint in the Daily Newspapers.

The Application was based on the grounds that the court had directed the 5th and 6th Defendant be enjoined and that 2nd, 7th, 11th, 12th, 17th and to 27th plaintiffs have withdrawn their claim and that they have inadvertently let out the name of the proposed defendant and that it will be in the interest of justice to enjoin the parties and the defendants will not suffer any prejudice. The Application was also supported by the affidavit of one Joseph Kisembe Kipintoi.

The Application was opposed by the respondent who contended that the Application for leave to amend is res judicata and that the proposed amendments are contrary to the provisions of Land Adjudication Act and that the same is bared by the Limitations of Actions Act.

I have read the application and the supporting affidavit and the submissions made. From the records it is clear that the Applicant herein was granted leave to amend the plaint way back in 2013, however for unknown reasons the Applicant rather than include all the parties that they wished to be included as defendants proceeded to include the 29th and 32nd plaintiffs only.

The Respondents contend that the issue of amendment was dispensed with and any other subsequent application to amend the plaint is res judicata and hence invited the court to decline the instant application.

The Respondent also contends that the application is bad in law as it offends the provisions of section 30 of the Land Adjudication Act as the applicant has not obtained the consent of the Land Adjudication Officer to commence the instant proceedings and further that there was inordinate delay by the Applicant.

Having perused the record I find that the Applicant was granted leave. However, I find that the grant of leave to amend a plaint and the making of a subsequent application does not make a suit res judicata. When leave was granted the court did not hear or take evidence in the suit and I therefore find that since the issue for determination which is the substratum of the suit has not been adjudicated upon and the court made a determination the main suit still subsisted and hence the grant of leave to amend does not make it res judicata.

On whether the Application offends the provision of section 30 of the Land Adjudication Act I find that the court in the instant application was to determine whether to grant leave or not. The issue of whether consent was obtained as per the requirement of section 30 of the land adjudication is a matter to await the final hearing of the substantive suit.

The upshot of my above finding is that I will allow the plaintiff's application dated 10th July, 2017 in the following terms:-

1. That leave is granted to the Applicant to further reamend the amended plaint dated 11/4/13 and enjoin the 7th to 55th defendants

and remove the 7th,11th,12th,17th,18th to 27th plaintiff.

2. The Applicant to file and serve the amended plaint within 14 days from the date of filing in person on all the defendants.

3. The Defendants to have 14 days from the date of service upon them to reamend their defence if they deem necessary

4. Each party to bear its costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 11th day of July, 2018

Mohammed Noor Kullow

Judge

In the presence of:-

Parties

N/A by the advocates

CA:Chuma

Mohamed Noor Kullow

Judge

11/7/18