



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 477 OF 2016

SCOLASTICA WABWIRE.....PLAINTIFF

VERSUS

KENNETH KIPTALA KAMUREN.....DEFENDANT

RULING

(Application for leave to further amend the plaint; application not opposed; application allowed).

1. The application before me is that dated 27 November 2017 filed by the plaintiff. It is an application filed pursuant to the provisions inter alia of Order 8 Rule 5 and seeks leave from this court to allow the plaintiff to further amend her plaint.
2. The suit itself was commenced through a plaint filed on 8 November 2016. In the original plaint, the plaintiff pleaded that he was at all material times the legal owner of the land parcel described as Plot No. 20 in LR No. 22641. It was averred that on 3 November 2016, the defendant trespassed into the said plot blocked its entry and fenced it. In the plaint, the plaintiff sought orders of a permanent injunction to restrain the defendant from the suit property and damages.
3. On 25 April 2017, the plaintiff amended the plaint which appears to have been amended pursuant to the provisions of Order 8 Rule 1, which allows amendment of pleadings, once, before the pleadings are closed. The amended plaint elaborates further on the original plaint, to plead that the plaintiff purchased the suit property from the defendant on 5 April 2002 through a written agreement at a consideration of Kshs. 220,000/= of which Kshs. 120,000/= was paid, leaving a balance of Kshs. 100,000/= which the plaintiff has been willing to pay but the defendant has refused to procure a Certificate of Lease in the name of the plaintiff. The same identifies the land in issue as Plot No. 19 and not Plot No. 20 as pleaded in the original plaint. There are also additional prayers included in the amended plaint, including prayers for a declaration that the plaintiff is the owner of the suit land, and an order to compel the defendant to cause a Certificate of Lease to be prepared for the suit land plus an order of transfer of the same to the plaintiff.
4. In this application, the plaintiff wants to further amend the plaint and she has annexed to her supporting affidavit the draft further amended plaint. I have seen that in the draft, she wishes to plead that the plot in question is not Plot No. 19 as indicated in the amended plaint, but is Plot No. 20, within LR No. 222641. There is further sought to be included, an alternative prayer for refund of the purchase price together with interest at prevailing commercial rates from 7 January 2003 until payment in full.
5. The application is not opposed and I see no reason why I should not allow it. The application sought is within the cause of action and I see no prejudice that will be caused to the defendant as the defendant is yet to file a defence. He will have opportunity to respond to the further amended plaint if he wishes to contest the suit.
6. I therefore allow the application and do give leave to the plaintiff to further amend her plaint. I direct that the further amended plaint be filed and be served within 14 days from today. I make no orders as to costs.
7. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 10th day of July 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Ms. Ogange holding brief for Mr. Omae for the applicant.

Mr. Simiyu holding brief for Mr. Ochieng' Gai for the respondent.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU