



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 92 OF 2017

FORMERLY NAKURU ELC NO. 62 OF 2014

RUPARE OLE KOIKA.....APPLICANT

-VERSUS-

LEMUNTOI OLE LETOLUO.....1ST RESPONDENT

PETER OLE LETOLUO.....2ND RESPONDENT

DISTRICT LAND REGISTRAR.....3RD RESPONDENT

HON. ATTORNEY GENERAL.....4TH RESPONDENT

RULING

The Application before me is the Notice of Motion dated 31st July, 2017 which was brought under order 8 Rule (3) (1) and 4, rule 5 and order 51 rule 1 and section 3 and 3A in which the Applicant seeks leave of the court to amend the plaintiff's name, prayer (a) of the plaint to read Rupare Ole Koiai.

The Application is based on the grounds that the plaint was filed in the name of the plaintiff but he did not indicate that he was suing on behalf of the estate of Muana Koikai in which he is the administrator of the deceased's estate and that the amendment sought will enable the estate of the deceased to enforce any order that will be issued by the court and lastly the proposed amendment will not prejudice the defendant.

The application was supported by the Affidavit of the Plaintiff which he expounded on the grounds on which the application is based. The applicant has averred that he is the administrator of the estate of the late Muana Koikai and he attached a confirmed letter of grant.

The Applicant further averred that the deceased prior to his death was a member of Olkenya Group Ranch and title to his share of his estate was wrongly issued to the 1st and 2nd defendant.

The Application was opposed by the Respondent who contends that the Application is incompetent as prayers sought cant be granted. The Respondent contends that letter ad litem was filed after the suit was filed and the applicant doesn't qualify for the orders sought.

I have read the application before me and the replying affidavit in opposition.

The grounds upon the grant of amendment is well settled by a number of authorities and that the amendment sought should not do any injustice or be an abuse of court process and that the amendment sought will be for the purpose of determining the real issues between the parties.

Even though the respondent contends that the letter of administration was obtained after the suit was filed I find that the respondent has not demonstrated what injustice or prejudice they will suffer if the amendments are made.

Having read the application and guided by the principle for the grant of orders of amendment, I will exercise my discretion and allow the application dated 31st July, 2017 and the amended plaint be filed and served within the next 14 days. The Defendants are granted leave to amend their defence if need be.

Costs in the cause.

DATED, SIGNED and DELIVERED in open court at NAROK on this 28th day of September, 2018

Mohammed Noor Kullow

Judge

28/9/18

In the presence of:-

Masikonde holding brief or Ms Moriney for the applicant

N/A for the Respondent

CA:Chuma