



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 95 OF 2017

FORMERLY NAKURU ELC NO. 75 OF 2014

DIANA KAPEEN & 2 OTHERS.....APPLICANT

-VERSUS-

CAROLINE LEINA LEMOMO & ANO.....RESPONDENT

RULING

The Application before me is the Notice of Motion dated 13th November, 2017 seeking leave to amend the Complaint dated 19th March, 2014 and the draft amend Complaint which is attached to the Application be deemed as duly filed.

The Application was based on the grounds that the dispute relates to the Plaintiff's ancestral land where the remains of the Plaintiffs parents are buried. The Applicant further relies on the grounds that at the time of filing this suit she did not take out letters of administration for the estate of her deceased father and she wishes to have the interest of her deceased father be determined. That the intended amendment will enable the court conclusively determine the real issue between the parties.

The Application was supported by the Affidavit of Diana Kapeen who had the authority of the 2nd and 3rd Plaintiff to swear the affidavit. She states that she and her Co-Plaintiffs are the children of the late Livingstone Koitamet Kapeen and Salome Nasieku and that they were raised on the suit land and that the same is their ancestral home.

The Applicant avers that they have occupied the land for the last 44 years without any disturbances and this is where the remains of their late parents and other loved ones are buried.

The Applicant deposes that at the time this suit was filed they did not take out Letters of Administration in respect of the estate of their late parents and now that they have obtained the said grant of representation they wish to amend the complaint and have the interest of their late father determined. To the affidavit, the Applicants have attached a copy of the grant of Letters of Administration issued on 28th September, 2017.

The Application was opposed by the Respondents who filed grounds of opposition and a replying affidavit. The respondents aver that the instant application is meant to alter/change the particulars of material which was not pleaded and the same is an afterthought because it has been brought late into the day.

The Respondents further aver that the Applicants seek to amend an otherwise defective complaint and the applicants' intent in introducing a new cause of action and the amendment sought will alter and take away their defence and counterclaim and that the Application has been made after the pre-trial directions were issued and hence is bad in law.

When the application came up for hearing before me it was decided that the application will be disposed off by way of written submissions and both parties did file their respective submissions.

Having read the application the issue for determination before me is whether the Applicant has laid down grounds for the grant of an order amending the complaint at this stage of the proceedings.

The courts have conclusively stated that leave to amend a complaint is ordinarily granted where the amendment sought will determine the real issues as between the parties and whether the amendment sought will be for the just and fair determination of the issues that are being litigated upon.

The Applicants in the instant application are seeking to amend for their own interest and by extension that of their deceased father in the suit land may be determined and from the application they seek to regularize their capacity to institute the proceedings as they have obtained

Letters of Administration in respect of their deceased father. I disagree with the Respondents' contention that the Applicants wish to introduce a new cause of action and the amendment sought at this stage of the proceedings is irregular.

It is trite law that a court may allow amendment to pleadings at any stage of the proceedings as provided for under order 8 Rule 3 of the Civil Procedure Rules. It is my finding that the amendment sought by the Applicant is made in good faith and no malafide on the part of the Applicant has been placed before me.

The upshot of the above is that I will allow the application dated 13th November, 2017 and I grant leave to the plaintiff to amend the plaint dated 19th March, 2014 and the draft amended plaint which was filed with the Application be deemed as duly filed upon payment of the requisite court fees. I will also further direct that the amended plaint be served on the Defendant within the next 14 days. The Defendants are hereby also granted leave to amend their defence accordingly.

Costs in the cause.

DATED, SIGNED and DELIVERED in open court at NAROK on this 26th day of September, 2018.

Mohammed Noor Kullow

Judge

26/9/18

In the presence of:

Ms Adala holding brief for Agwara for the plaintiff/applicant

Mr Kambo for Masika for defendant

CA:Chuma