



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 894 OF 2014

FRANCIS THANDE JAMES KIARIE.....PLAINTIFF

VERSUS

JOHN KARANJA KAHERA & ANOTHER.....DEFENDANTS

RULING

1. This is a ruling in respect of a notice of motion dated 17th April 2018. The application is brought by the defendants/Applicants who are plaintiffs in the counter-claim. The application seeks to amend the defence and counter-claim. The parties were directed to file written submission in respect of the application. As at 26th July 2018 when a date for ruling was fixed, the plaintiff had not filed his submissions. The plaintiff was granted 14 days to file his submissions. As at the time of writing this ruling, those submissions had not been received if any were filed.

2. The Plaintiff/Respondent opposed the proposed amendment through a replying affidavit sworn on 18th May 2018. The respondent contends that the amendment should not be granted because to do so will be introducing a party to the proceedings who is not a party to this suit.

3. I have considered the applicants application as well as the opposition to the same by the respondent. I have also considered the submissions by the applicant. The only issue for determination is whether the amendment sought should be allowed or not. One of the prayers in the counter claim is for cancellation of title held by the plaintiff. The amendment which is sought is to introduce a prayer for the rectification of the register to restore the name of Loise Wanjira Kahera (deceased) as proprietor of land parcel LR No.Dagoretti/Kangemi/307.

4. The issue in contention in this suit is that the plaintiff who is the grandson of Loise Wanjira Kahera who was the registered owner of the suit property had the property transferred to himself during the lifetime of the deceased grandmother in a fraudulent manner. The deceased had three daughters. The plaintiff is son of one of the daughters. In case the applicants succeeded in their claim and title held by the plaintiff was to be cancelled, there has to be a name under which it has to be held as the process of sharing it out starts. This is why the amendment appears to be necessary in the circumstances.

5. The law relating to amendments is that the same ought to be freely given at any stage of the proceedings unless the same will prejudice the respondent. In this case, the question of an additional party does not arise. The amendment will not prejudice the plaintiff /respondent in any way. The object of amendment was aptly captured in the case of Institute for **Social Accountability & Another Vs parliament of Kenya & Others (2014)eKLR** where a bench of three Judges had this to say:-

“ The object of amendment of pleadings is to enable the parties to 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 or remedy already claimed, but rather on the basis of the true state of the facts which the parties really and finally intend to rely on. The power of amendment makes the function of the court more effective in determining the substantive merit of the case rather than holding it captive to form of the action or proceedings”.

6. The intended amendment does not introduce any new cause of action and as I have already said herein above it does not prejudice the plaintiff /respondent. I therefore find the application well merited. I allow the same. Amended defence and counter claim to be filed within 7 days of the date hereof. If the plaintiff wishes to amend his plaint, the amendment should be done within 7 days of being served with amended defence and counter-claim. Costs in the cause.

It is so ordered.

Dated, signed and delivered at *Nairobi* on this *19th* day of *September, 2018*.

E.OBAGA

JUDGE

In the presence of ;-

Mr Tebino for the Respondent

M/s Mwangi for M/s Opondo for Applicant

Hilda : Court Assistant

E.OBAGA

JUDGE