



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 10 OF 2017**

**FORMERLY NAKURU HCC NO. 246 OF 2000**

**JOHN KASAINI & OTHERS.....PLAINTIFF**

**-VERSUS-**

**PASAYE OLE KEREMA.....DEFENDANT**

**RULING**

By a Notice of Motion dated 3<sup>rd</sup> April, 2018 the Applicants sought for leave to amend their amended plaint and one Harun Lempaka be enjoined to the suit herein as the 5<sup>th</sup> Plaintiff.

The Application was based on the grounds that the proposed 5<sup>th</sup> Plaintiff has an identifiable stake in the suit herein and that the amendments sought will facilitate the just and expeditious resolution of the matter in question.

The Applicant in his Application further stated that during the pendency of the suit herein and despite the existence of a conservatory order, the 1<sup>st</sup> to 7<sup>th</sup> Defendants have secured fraudulent and illegal re survey of the suit property Cis Mara/Olopito/788 into 794 plots numbers 5556 to 6350 and hence destroyed the substratum of the suit.

The Application was supported by the Affidavit of Johnson Kasaine Ole Sadera who deponed to the fact that he had filed the suit herein in the year 2000 and he was shocked to find that in the year 2015 the suit property was sub-divided into new plots and he suspected that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants effected the said sub-division and states that it was for the Defendants to have effected the said sub-division when there was an order for maintenance of status quo.

He further averred that when the sub-division was undertaken approximately about 20 acres of the suit land were transferred to one Harun Lempaka.

The Application was opposed by the Respondents who filed a Replying Affidavit of Pasaye Ole Kerema in which he deponed that the Application for leave to amend is mischievous and is in bad faith and meant to cure an otherwise bad case. He stated that the 1<sup>st</sup> Plaintiff in his evidence in chief and cross-examination had admitted that he brought the suit on behalf of his father before obtaining grant of representation and he has thus obtained a grant of letters of administration Ad Litem.

The Respondent averred that the introduction of one Harun Lempaka as another Plaintiff as a person in whose trust the late Shena Ole Sadera held about 8 hectares in trust for him and the proposed amendment is meant to introduce a new cause of action in the matter.

I have read the Application before me and the submissions filed by parties and the issue for determination before me at this stage, is to determine whether the Applicant has satisfied the conditions for the grant of leave to amend his Plaint.

In the instant case, the Plaintiff wishes to have one Harun Lempaka joined as a 5<sup>th</sup> Plaintiff, it is worth noting that this Application is being made when the pleadings are closed and when the Applicant herein had testified in the substantive suit and during his testimony he did not state anything that indeed showed that the proposed 5<sup>th</sup> Plaintiff had a stake in the instant matter. Further to the above, I find there is no affidavit in support of the instant application by the proposed 5<sup>th</sup> Plaintiff in asserting his claim in the instant suit and/or lay claim for the purported trust that the Applicant alludes to in his Application.

Whereas the courts have wide discretion to allow a party to amend its pleading so that the amendment sought will assist the court in determining the final issues between the parties in the instant Application, it is my considered view that if the amendment sought are issued will be prejudicial to the Defendants as the substantive suit has already proceeded and if the amendment sought are allowed then the same will mean the case has to start afresh with new facts and issues of law canvassed by the parties.

It is my finding therefore that the Application dated 3<sup>rd</sup> April, 2018 lacks merit and I therefore dismiss the same with costs.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 31<sup>st</sup> day of October, 2018.**

**Mohamed N. Kullow**

**Judge**

**31/10/18**

In the presence of:

Mr Ndungu for 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> intended plaintiffs

Ms Nchoe holding brief for Akango for the Defendants

CA:Chuma

**Mohamed N. Kullow**

**Judge**

**31/10/18**