

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 924 OF 2012

NICHOLAS KUNDU WANYAMA.....PLAINTIFF

VERSUS

BENSON KOSGEI KIBET.....1ST DEFENDANT

JANE NYONGESA.....2ND DEFENDANT

RULING

The application before court is dated 20.10.2017 wherein the plaintiff prays for leave to amend his plaint in the manner of the draft amended plaint and that the draft amended plaint be deemed properly filed subject to payment of any court fees and that leave be granted to the plaintiff to file supplementary bundle of documents.

The application is based on grounds that the plaintiff is desirous of pleading specifically to the particulars of fraud on the part of the defendants since the 1st defendant is the registered proprietor of the suit property and that the title can only be challenged on the grounds of either fraud or misrepresentation. The plaintiff states that some facts have just come to his attention and therefore the need to amend the

In the supporting affidavit, the plaintiff states that after perusing the certified copy of register and noting that the manner in which title was passed from the late Stephen Nyongesa Karibu to Benson Kosgei Kibet, the 1st defendant herein having obtained letters of grant of administration intestate on 23.1.2013. He states that the application would not prejudice the defendant.

The 1st defendant filed grounds of opposition stating that the application has been filed 6 years since the filing of the suit and therefore the delay is unreasonable and inordinate. That there are no orders sought against the 3rd defendant where enjoinder is sought after PW1 testifying. Moreover, that the 1st defendant was not a party to the previous proceedings in Eldoret CMCC No. 1031 of 1998 and that the prayers sought shall occasion prejudice to the 1st defendant.

The 2nd defendant states that she followed every step that she was advised to do until when the land was transferred to the 1st defendant and therefore, the allegation of fraud are baseless and that there was no objection in the succession cause. The application is baseless as the allegation cannot be proved. Her husband died in 2008 and before his death, the plaintiff did not claim the land. The properties are two and the plaintiff does not demonstrate which property he bought.

I have heard all parties in this matter and do find that the application is filed 5 years after the suit was instituted and this demonstrates inordinate delay. No reason has been given for this delay.

The application is made after PW1 has testified, been cross examined and produced documents and therefore, the defendants will be prejudiced. The plaintiff does not state when he discovered fraud on the part of the defendants.

Moreover, there is no prayer sought against the 3rd defendant. The caution contested was removed through a court order in Eldoret CMCC No. 1031 of 1998, whose proceedings the plaintiff has not belabored to annex to assist the court in determination of the application. The upshot of the above is that the application is dismissed with costs.

Dated and delivered at Eldoret this 30th of October, 2018.

A. OMBWAYO

JUDGE