



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 80 OF 2017

FORMELY NAKURU ELC CAUSE NO. 258 OF 2014

KARINO OLE KORIATA.....PLAINTIFF

-VERSUS-

STEPHEN KAITET KORIATA.....1ST DEFENDANT

DISTRICT LAND REGISTRAR NAROK.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

RULING

By a Notice of Motion dated 17th July, 2017 which was brought under Order 8 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act the Applicant sought for orders that he be granted leave to amend his plaint and the amended plaint annexed to the Motion be deemed as properly filed. The Application was based on the grounds that the proposed amendment seeks to bring to court the real issues for determination and that the same will enhance fair and just determination of the question in controversy which were not presented accurately by the previous advocates.

The Application is based on the grounds that there was fraud which was masterminded and executed by the Plaintiff and the 1st Defendant and as a result of this fraud the Defendant do continue to enjoy and benefit as a result of the aforesaid fraud and it shall be in the interest of justice that the Plaintiff/Applicant be granted leave to amend his plaint accordingly and plead fraud, a claim of damages.

The Application was opposed by the 1st Respondent who filed grounds of opposition and contend that the application is misconceived, bad in law and that the amendment sought is time barred.

When the Application was coming up for hearing, none of the Respondents made any submissions and counsel for the Applicant stated that he will rely on the pleadings as filed.

In the instant case though the pleadings have been closed the reasons for the amendments sought are such that they will conclusively assist the court in determining the real issues as between the parties and assist the court in granting a fair determination. It will be just and fair that a party is granted an opportunity to ventilate the same and it is my finding that the Respondent will not suffer any prejudice since they will have the chance to respond to the same.

The upshot of the above is that I will allow the Application dated 17th July, 2017 and order that leave be granted to the Plaintiff to amend his plaint as prayed and the amended plaint which was filed by the Applicant be deemed as properly filed subject to the payment of the requisite fees.

Defendants are also granted leave to amend their defence accordingly.

Costs in the cause.

DATED, SIGNED and DELIVERED in open court at NAROK on this 25th day of October, 2018.

Mohamed N. Kullow

Judge

25/10/18

In the presence of:

N/A for the parties and advocates

CA:Chuma