



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC SUIT NO. 92 OF 2013

ARTHUR ATHANASUIS MOODY AWORI.....PLAINTIFF/APPLICANT

VERSUS

FELIX MBOYA.....1ST DEFENDANT/RESPONDENT

JACK AMAYO BUONG.....2ND DEFENDANT/RESPONDENT

JOHN AMAYO OKOTO.....3RD DEFENDANT/RESPONDENT

MARGARET ACHIENG OUMAH.....4TH DEFENDANT/RESPONDENT

RULING

1. Arthur Athanasuis Moody Awori, the Plaintiff, vide notice of motion dated 5th July 2017 seeks for leave to amend the Further Amended Plaintiff in terms of the annexed copy which he also prays to be deemed filed and served. The application is based on the six grounds on its face and supported by the Plaintiff's affidavit sworn on the 5th July 2017.

2. The application is opposed by Felix Mboya, Jack Amayo Buong, John Amayo and Margaret Achieng Oumah, the Defendants, through the five (5) grounds of opposition dated 6th March 2018

3. The application came up for hearing on the 12th March 2018 when directions on filing and exchanging the written submissions were given. That the learned counsel for the Plaintiff filed their submission dated the 25th July 2018. That when the matter came up for mention on the 26th September 2018, the learned counsel for the Defendants notified the court that he would not be filing any submissions.

4. The following are the issues for the Court's determinations;

a) Whether the Plaintiff has shown that the County Registrar and surveyor Kisumu are important parties to be enjoined as Defendants.

b) Whether the enjoining of the County Land Registrar and Surveyor Kisumu as Defendants will assist the court in determining the issues over ownership and ground position of the suit land between the Plaintiff and Defendants.

c) Who pays the costs.

5. That the court has after considering the grounds on the application, grounds of opposition, affidavit evidence and submissions by the Plaintiff come to the following conclusions;

a) That the Plaintiff commenced this suit against Dr. Felix Ouma, Jack Otieno Onyango, John Amayo and Mary Odhiambo, the original 1st to 4th Defendants vide the plaint dated the 16th April 2013 and filed on the 22nd April 2013. The Plaintiff avers that he is the registered owner of 2.9 hectares of L. R. 24740 (I.R No. 82495) Kanyakwar, on a 99 lease from 1st October 1999. That the Defendants wrongfully and unlawfully entered and or trespassed onto the said land in October 2010. The Plaintiff seeks for permanent injunction, eviction, general damages and costs against the Defendants. The Plaintiff filed the Amended Plaintiff dated the 12th June 2013 replacing the names Jack Otieno Onyango and Mary Odhiambo, who were the 2nd and 4th Defendants, with Jack Bwonga and Margaret Achieng Ouma respectively.

b) The 1st to 4th Defendants opposed the claim through the statement of defence dated 15th July 2013. They denied trespassing onto the land as alleged. The Defendants averred among others that the Plaintiff's grant to the said land may have been forfeited to the

Government for failure to pay rent and rates. That the Defendants are occupying Kisumu/Kanyakwar "B"/1379, 1394, 1395 and 1390 and not L.R. NO. 24740 [I.R 82495].

c) That the Plaintiff main basis of seeking for leave to amend the plaint further is that the parcels claimed to be owned by the Defendants may be positioned on the same ground where his parcel is, and there is therefore need to enjoin the County Land Registrar and Surveyor Kisumu. That the court finds the participation of the two Public Officers in the proceedings would greatly assist the court in determining, not only the ground positions of the parcels claimed by the Plaintiff and Defendants, but also the legality or otherwise of the title documents held by the said parties.

6. That in view of the foregoing, the court finds merit in the Plaintiff's notice of motion dated 5th July 2017 and orders as follows;

a) That the application be and is hereby allowed with costs in the cause.

b) That the copy of the Further Amended Plaintiff dated the 5th July 2017, annexed to the application, be and is hereby deemed duly filed and served upon the existing Defendants on the Plaintiff paying the filing fees in 14 days.

c) That the 1st to 4th Defendants granted leave to file and serve Amended Defence in 15 days.

d) The Plaintiff do serve the Summons to Enter Appearance, Further Amended Plaintiff and other relevant pleadings, documents and statements upon the Hon. Attorney General for the 5th and 6th Defendants in thirty (30) days.

e) That parties do comply with Order 11 of Civil Procedure Rules in ninety (90) days. That the matter be mentioned before the Deputy Registrar for trial conference and confirmation of compliance on a date to be fixed after this ruling.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 28TH DAY OF NOVEMBER 2018

In the presence of:

Plaintiff Absent

Defendants Absent

Counsel M/s Orimbo for Hayanga for the Plaintiff.

S.M. KIBUNJA

ENVIRONMENT & LAND JUDGE