



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 253 OF 2013

ERASTUS K. LANGAT.....PLAINTIFF

VERSUS

REGISTRAR OF LANDS NAKURU & 10 OTHERS.....DEFENDANTS

RULING

(Application to dismiss suit for failure to comply with orders of court directing the plaintiff to file an application to amend the plaint; instead, an amended plaint being filed; plaintiffs given 30 days to follow court's directives and pay throwaway costs).

1. This suit was commenced through a plaint which was filed on 8 May 2013. In the plaint, the plaintiff listed 10 defendants and claimed to be the owner of the land described as Boma 85 Plot No. 365 of 70 acres subdivided into the plots Nakuru/Olenguruone/Cheptuech/Plots No. 596, 595, 593, 592, 665, 243, 591, 594, 598, 589, 242, 709, and 708 said to have further been subdivided into the plots No. 831 and 830. The plaintiff has contended in the plaint that he is of the Ogiek Community and has lived in this land with his family since the year 1941. He has averred that he was issued with an allotment letter to the Plot No. 365 in the year 1965 and that when adjudication was done, his land was fraudulently subdivided and title deeds issued to other people, leaving the plaintiff with only 9 acres of land. In the suit, the plaintiff inter alia wants to have a cancellation of all title deeds issued from this land parcel Boma 85 Plot No. 365.

2. A joint Statement of Defence, on behalf of the 4th – 10th defendants, was filed on 3 June 2013 through the law firm of M/s S.G On'ganyi & Company Advocates. The State Law Office filed defence on behalf of the 1st – 3rd defendants on 3 September 2013. The claims of the plaintiff were refuted in both statements of defence.

3. On 19 October 2017, when the case came up for a pre-trial conference, Mr. Kipkoech, learned counsel for the 4th – 10th defendants, of the firm of M/s Gordon Ogola & Kipkoech Advocates, who had taken over the matter from the firm of M/s S.G On'ganyi & Company Advocates, made submissions that some defendants had died prior to the commencement of the suit and some afterwards. He stated that the 5th defendant died on 7 March 2006, the 6th defendant died on 25 November 2008; the 9th defendant died in the year 2014, and the 10th defendant is wife of one Richard Cheruiyot, the registered proprietor of the land parcel No. 595, and that the said Richard died on 6 October 2014. He pointed out that the 10th defendant is not vested of this particular land and is not the administrator of the estate of Richard Cheruiyot. Mr. Kipkoech did file on 22 November 2017, Certificates of Death for the 5th and 6th defendants and for Richard Cheruiyot the registered owner of parcel No. 595. These documents reveal that the 5th defendant died on 25 November 2008, and the 6th defendant died on 8 March 2006. Richard Cheruiyot died on 6 October 2014. Given these developments, I directed Mr. Gai to assess his client's position, and on 9 April 2018, I gave the plaintiff 60 days to file an application to amend the plaint and further directed that if none was filed, I reserved the discretion to strike out the suit, as it was clear to me that when the suit was filed, some defendants had died.

4. No application to amend was filed within the 60 days directed and on 24 September 2018, the 4th defendant filed an application to strike out the suit, as there was non-compliance with the directions giving the plaintiff time to amend the plaint. In this application, the 4th defendant has pointed out that the 60 days given to file an application to amend lapsed on 9 June 2018.

5. On 12 October 2018, the plaintiff filed an Amended Plaint, striking out the names of the 5th and 6th defendants. He also filed a reply to the 4th defendant's application to strike out the suit. In the said affidavit, he averred that he suffered ill health and was also hampered by a lack of finances.

6. I took in the submissions of Mr. Kipkoech for the applicant and Mr. Gai for the plaintiff. It is correct as pointed out by Mr. Kipkoech, that

what I directed the plaintiff to do was to file an application to amend the plaint. I have yet to give leave to amend the plaint for I can only do this after being satisfied that what is proposed to be amended is permissible. What the plaintiff did was to file an amended plaint without leave of the court. I can bend over backwards to accommodate the plaintiff, and overlook the fact that he did not file an application to amend as directed, and filed an amended plaint instead, but I am afraid that I cannot allow the amended plaint for it has glaring errors. For example, in as much as the names of the 5th and 6th defendants have been removed, the plaintiff still claims the parcels of land that are registered in their names. This surely is not permissible. If you remove a defendant who is registered as owner of certain land, you cannot in the same pleading, claim the same land that is registered in the name of the person that you have removed in the case. I had hoped that within the 60 days that I gave the plaintiff, he would do his research, find out who had died before he filed suit, find out who is in the case and is not an owner of any of the property claimed, present his findings in the application to amend, then I would consider whether what he proposes to rectify in his case is permissible. As I have stated, I am unable to allow the amended plaint to remain on record as filed, and I have no option but to strike it out.

7. I honestly do not know what the plaintiff wants to do with his case. It is already apparent that some people were dead when the suit was filed; the plaintiff has not made any application to amend the plaint as directed. I really do not see how the suit can proceed in the state that it is currently. I have every reason to strike out this suit, but in my discretion, I will allow the plaintiff one last chance to remedy his plaint. I will extend by a further 30 days the period for filing an appropriate application to amend. If no such application is filed, this suit will stand struck out with costs to the defendants.

8. The 4th defendant was not out of place in filing this application, and I will award him the costs thereof. I will assess the costs at the time that I will deliver this ruling and such costs to be paid before the application to amend is filed.

9. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 14th day of November 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Mr. Kipkoech for the applicants.

Mr. Gai for the respondent.

Court Assistant: Nelima Janepher

Carlton Toroitich

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU