



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
ENVIRONMENT AND LAND COURT AT MERU
CIVIL SUIT NO. 10 OF 2012 (OS)

JOHN KIMATHI M'MUTURI.....1ST PLAINTIFF

PAUL KIAMATHI MUCEE.....2ND PLAINTIFF

JOSPHAT MWATHI M'RIRIA.....3RD PLAINTIFF

VERSUS

ERASTUS GITHURU CHABARI.....DEFENDANT

RULING

1. The application dated 17/3/2016 has been filed by the plaintiffs who seek the following orders;

1. That plaintiffs be allowed to amend the Originating Summons dated 2nd may 2012, filed on 14th may 2012.
2. That one Margaret Tirindi Mwiti be added as a plaintiff in this suit
3. That the draft OS annexed be deemed as properly filed upon payment of the requisite fees.
4. That costs be in the cause.

2. Grounds in support of the application are that;

1. That the intended amendment will enable the court determine the real questions in controversy as between the parties.
2. That the mistake sought to be corrected was a genuine/bonafide mistake and is not misleading.
3. That it is necessary to add Margaret Tirindi Mwiti as a Petitioner in this suit to enable the court adjudicate on thee matter effectively and completely.
4. That no prejudice or injustice will be caused to the defendant in respect of the proposed amendment.

3. Two affidavits have been filed in support of the motion. One is by 1st plaintiff (JOHN KIMATHI M'MUTURI) on behalf of the other plaintiffs as well as on behalf of the proposed plaintiff. The other is filed by the proposed plaintiff, one MARGARET TIRINDI MWITI.

4. The gist of the averments of the plaintiffs and proposed plaintiffs are;

1. That when the OS was filed, plaintiffs had not engaged the services of a surveyor so as to know the exact acreage of each claimant.

2. That the plaintiffs did engage a surveyor, one JOEL MURIITHI who prepared a report detailing the actual acreage of the occupiers of the land in question. The report is an annexure.

5. When the matter came up before me on 22/2/2017, directions were given for the application to be canvassed by way of written submissions.

6. For the plaintiffs, it has been submitted that its necessary to amend the OS to enable the court determine the dispute effectively.

7. On the side defendant the court has been told that the plaintiffs have no duty to apply to bring on board another plaintiff, that it has not been shown that Margaret is incapacitated, and that there is nothing to show that Margaret Tirindi has authorized the plaintiffs to bring forth the application. In essence defendant is stating that the wrong procedure has been used to bring forth this application.

8. I find that the surveyors report is dated 16/9/2015. It has details of the acreage of each claimant. The proposed plaintiff is allegedly occupying 7.6 acres. Even if the acreage of the claimants was not known by the time the OS was being filed, at least the claimants were known. Why then was Margaret omitted from the list of claimants at the initial stage?. Neither the plaintiffs nor the proposed applicant has clarified this issue. It follows then that the surveyors report cannot be the anchor for the application.

9. I have however established from the record of 5/12/2016 that parties had more or less agreed to have the application allowed. Present was Mr. Muthaura holding brief for J.G. Gitonga for the plaintiff and Miss Muna holding brief for Mr. Ndubi for Respondent. Mr Muthaura had addressed the court as follows;

“plaintiffs vide their application dated 17/3/2016 seek leave to amend the OS. Both advocates have agreed that the same be allowed.....”

10. It appears that the court did not deal with the issue of the present application primarily because the matter was before the Judge for Notice To Show Cause why the matter should not be dismissed.

11. This court is a court of justice as well as a court of record. The record of 5/12/2016 has not been erased.

12. Further, I find that surveyors report has changed the acreage for the present plaintiffs, such that even if the court was to disallow the prayer to add another plaintiff, the amendment would still be essential to reflect the actual acreage of the claimants.

13. In light of the foregoing the court allows the the application of 17/3/2016 on the following conditions;

1. The draft amended OS is deemed as properly before the court upon payment of the requisite fees within seven days.

2. Defendant is at liberty to file his response within 21 days.

3. Plaintiffs are condemned to pay costs of this application.

DELIVERED IN OPEN COURT AT MERU THIS 5TH DAY OF APRIL, 2017

IN THE PRESENCE OF:-

C:A Janet

J.G. Gitonga for Plaintiffs present

Ndubi for defendants

HON. L.N MBUGUA

JUDGE