



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAROK**  
**ELC CAUSE NO. 23 OF 2017**  
**FORMERLY NAKURU ELC CASE NO. 543 OF 2016**  
**MOSES SANINGO NAIGURAN.....PLAINTIFF**  
**-VERSUS-**  
**GEOFFREY MAKANA ASANYO.....DEFENDANT**  
**RULING**

The Plaintiff/Applicant has on the 5<sup>th</sup> day of May 2017, filed an application under order 1 Rule 6 of the Civil Procedure Rules and order 8 rule (3) and section 3A of the Civil Procedure Act.

The Applicant was seeking orders to stay further proceeding of the suit herein and leave to amend his pleadings/plaint and further that the amended plaint which was annexed to the application be deemed to be duly filed.

The Application was based on the grounds that are on the face of the Application namely that the intended amendment was meant to include the other Administrators of the estate of the late John Lemutai Naiguran, to enjoin the Land Registrar, Trans-Mara as a Defendant. The applicant further contends the intended amendment will not introduce new matters.

The Application was further supported by the Affidavit of Moses Saningo Naiguran who in his affidavit elucidated on the above grounds. The Applicant has averred in the Affidavit that the other co-Administrators of the estate of the deceased were left out when the instant suit was first instituted. Further the applicant avers that the Defendant had transferred the suit land to himself despite the existence of a consent to the contrary.

The Applicant further states that the transfer and the actual registration of the land as being co-owned by the Defendant/Respondent is an illegality which was perpetuated by the Land Registrar and hence the need to enjoin the Registrar as a party.

The Respondent has opposed the said application through a Replying Affidavit that was filed in court on the 11<sup>th</sup> May, 2017. The Respondent contends that the Application is based on falsehoods and, further that the court had in delivering its ruling on the inter-locutory injunction said that the Applicant has not obtained the consent of his co-administrators and not failing to include them as a party to suit.

The Respondent further avers that the Applicant had all the time to amend the pleadings but waited when the case was confirmed for hearing to bring the instant Application which is meant to delay the expeditious disposal of the suit. The Respondent in a nutshell states that the application is made in bad

faith.

The Respondent further avers that the intended amendment offends the provisions of the Government Proceedings Act Chapter 40 Laws of Kenya to the extent that the Registrar to whom the Applicant seeks to enjoy is not a legal entity capable of being sued.

The Applicant and the Respondent filed their respective submission and the same was highlighted in court.

I have had the benefit of reading the Application and the Replying Affidavit and the submissions filed and it is my finding that the Application seeking amendment is not one that warrants the court to exercise its discretion.

The record will show that the Applicant was granted the opportunity by the court to amend his pleading but he elected not to and thus when the pleadings were closed and filing an application when the pleadings are closed and the suit has been set down for hearing is only meant to delay the conduct of the case herein.

On the issue of joining the other administrators of the estate I wish to state that there is no requirement in law requiring all administrators of the estate of the deceased person to be joined as a party. The only requirement is that where there exists more than one administrator, the consent of other administrator be sought. The obtaining of such a consent does not require the inclusion of co-administrator as a party to the suit.

The Government proceeding Act chapter 40 regulates all proceeding instituted against the state/state officers acting in the conduct of their official work. It is trite law that where a government officer acting in his official capacity commits a wrong then it is the office of the Attorney General that ought to be sued. In view of that I see no merits in the need to include the Land Registrar as a party to the suit. Furthermore a Land Registrar is not a legal entity capable of being sued.

In a nutshell, the Application dated 5<sup>th</sup> May, 2017 has no merit and I dismiss the same with no order as to costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this 13<sup>th</sup> day of July 2017.

**Mohamed N.Kullov**

**Judge**

**13/7/17**

In the presence of:

Ms. Ochwal for the defendant

Mr. Kinoti holding brief for Mr. Maritim

CA:Chuma