



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO.

ELC CASE NO. 32 OF 2015

**IN THE MATTER OF LAND PARCEL NUMBER KERICHO/SOSIOT/473 Sub-divided into
parcels nos.**

**KERICHO /SOSIOT/3343, KERICHO/SOSIOT/3344, KERICHO/SOSIOT/3345 AND
KERICHO /SOSIOT/3346**

AND

IN THE MATTER OF SECTION 36 OF THE LIMITATION OF ACTIONS ACT

BETWEEN

FREDRICK CHERUIYOT KILEL.....PLAINTIFF

VERSUS

DAVID CHERUIYOT BETT.....1ST DEFENDANT

SAMWEL KIPKORIR BETT.....2ND DEFENDANT

REBECCA CHEPKURUI BETT.....3RD DEFENDANT

JOHN KIPKURUI BETT.....4TH DEFENDANT

RULING

By a Notice of Motion dated 19th September 2016 brought pursuant to Order 8 Rule 3 of the Civil Procedure Rules 6 the applicant seeks leave to amend the Originating Summons filed on 7th July 2015.

As indicated in the grounds of the application and the supporting affidavit, the gist of the amendment is to reflect the new parcels numbers KERICHO/SOSIOT/3343/KERICHO SOSIOT/3344, KERICHO/SOSIOT/3345 and KERICHO/SOSIOT/3346 resulting from the sub-division of the of the original title number KERICHO/SOSIOT/ 473. A copy of the proposed Amended Originating Summons is attached to the Supporting Affidavit.

The application is opposed by the Respondents through Grounds of Opposition filed by their advocates M/S Orina & Company Advocates. In the said Ground of Opposition, the Respondents state that the applicant has no genuine claim against the Respondents to warrant the orders sought in the application and that the entire suit against the Respondents lacks merit and should be dismissed with costs.

The parties opted to canvass the application by way of written submissions and while the Plaintiff/Applicant filed his, the Respondent had not filed any at the time of writing this Ruling.

This is a fairly straight forward matter involving amendment of pleadings. Order 8 Rule 3 of the Civil Procedure Rules provides as follows:-

“Subject to Order 1 Rules 9 and 10, Order 24 Rules 3,4, 5and 6 ... the court may at any stage of the proceedings on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings”

Bullen, Leak and Jacobs –Precedents of Pleadings 12th Edition at page 127 under the sub-title Amendment with leave-time to amend states as follows:

“The power to grant or refuse leave to amend a pleading is discretionary and is to be exercised so as to do what justice may require in the particular case as to costs or otherwise. The power may be exercised at any stage of the proceedings and accordingly amendment may be allowed before, at the trial or after trial or even after judgment.

As a general rule however, the amendment sought to be made should be allowed if it is made in good faith and if it will not do the other party any harm, injury or prejudice him in a way that cannot be compensated by damages”

In the case of **Institute for Social Accountability & Another Vs. Parliament of Kenya & 3 Others (2014) eKLR** the court observed as follows in determining whether to allow the petitioner to amend their consolidated petition:

“The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted, not on the false hypothesis of facts already pleaded or the relief or remedy claimed, but rather, on the basis of the true state of facts which the parties really and finally intend to rely on. The power of amendment makes the court more effective in determining the substantive merits of the case rather than holding it captive to form of the action or proceedings”

In the instant case it is clear that the objective of the amendment is to reflect the current parcel numbers resulting from the sub-division of the original title as the original number no longer exists. This would assist the court in determining the real issues in controversy. I do not see what prejudice this would occasion the Respondent as no material has been placed before me to arrive at such a conclusion.

For the foregoing reasons, I exercise my discretion and allow the application. I direct that the draft Amended Originating Summons filed with the Notice of motion be deemed as duly filed upon payment of the requisite court filing fees.

The costs of the application shall be borne by the applicant.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 22ND DAY OF SEPTEMBER 2017

J.M ONYANGO

JUDGE

IN THE PRESENCE OF:

Mr. Kiprono for the respondent

Miss Kitur for Maengwe for the Applicant

C/A; Rotich