



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.210 OF 2012

MIRIAM SUSAN CHEROTICH BOSKWONY (suing as the Administrator

of the Estate of Charles Boskwony).....PLAINTIFF

VERSUS

PHILIP KIPKOECH BIWOTT & 5 OTHERS.....DEFENDANTS

RULING

(Application for amendment of plaint; application allowed)

1. The application before me is that dated 27 September 2017 filed by the plaintiff pursuant inter alia to the provisions of Order 8 Rule 3. It is an application seeking leave to amend the plaint.

2. The original plaint was filed on 14 August 2009, vide which the plaintiff, suing as administrator of the estate of the late Charles Boskwony, sued one Kennedy Nyabuti Ogeto, over the land parcel Nakuru Municipality Block 23/50 (hereinafter 'the suit property'). The plaintiff averred that the late Boskwony, in the year 1993, acquired title to the suit property. She pleaded that on 11 August 2009, she carried out an official search and discovered that the title to the suit property is registered in the name of Mr. Ogeto, who had become registered as proprietor on 7 August 2002. It is the plaintiff's case that she has never sold the land to Mr. Ogeto and she has pleaded that he must have obtained title by way of fraud. In the suit, she inter alia asked for an order of cancellation of the title of Mr. Ogeto.

3. Mr. Ogeto filed a defence on 27 November 2009, vide which he pleaded that he never purchased the suit property from Mr. Boskwony, but that he bought it from one Philip Mangare Matoke, who had in turn purchased the property from one Philip Kipkoech Biwott, who had purchased the suit property from Mr. Boskwony on 27 January 1997. He refuted the allegation that he had acquired title by way of fraud.

4. On 28 February 2013, the plaintiff filed an application for leave to amend the plaint to include Philip Mangare Matoke, Philip Kipkoech Biwott, the Honourable Attorney General, the Commissioner of Lands, and the District Lands Registrar, Nakuru, as additional defendants. That application was allowed by consent and an amended plaint was filed on 22 March 2013.

5. Through this application, the plaintiff wishes to further amend the plaint.

6. I have looked at the draft amended plaint, and save for substituting the Chief Land Registrar, for the Commissioner of Lands, I have not really seen much that goes to affect the previous pleadings. I also see no prejudice that is going to be suffered by the defendants if I am to allow the amendment.

7. I therefore give leave to the applicant to amend her plaint in line with the draft amended plaint that was annexed to this application. The amended plaint to be filed and served within 14 days from today.

8. There will be no orders as to costs.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 15th day of November 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of : -

Mr. Magata for the 3rd defendant/respondent.

No appearance on the part of M/s Gordon Ogola & Kipkoech Advocates, for the plaintiff/applicant.

No appearance on the part of the 1st, 2nd, 4th, 5th and 6th defendants/respondents.

Court Assistant: Carlton Toroitich.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU