



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT KISUMU

HCC NO. 50 OF 2011

ANNE OMOLLO.....PLAINTIFF

VERSUS

OWALA OLAGO.....DEFENDANT

RULING

1. **Anne Omollo**, the Plaintiff, filed the notice of motion dated 18th March 2014 seeking for leave to amend her plaint as per the attached copy, specifying the suit land as parcel **Kisumu/Kogony/5641** which is a subdivision of parcel Kisumu/Kogony 1266. The application is supported by the affidavit sworn by **Anne Omollo** on 18th March 2014 and the six grounds on its face.
2. The application is opposed by **Owala Olago**, the Defendant, through his replying affidavit sworn on 11th July 2014.
3. The counsel for the Plaintiff filed their written submissions dated 24th November 2014, while the Defendant's counsel filed theirs dated 4th March 2016.
4. The issue for determination is whether the amendment sought should be granted and on what terms.
5. The court has carefully considered the grounds on the notice of motion, the affidavit evidence by both parties, submissions by both counsel and concluded as follows:
 - a) That the amendment sought is limited to substituting parcel **Kisumu/Kogony/1266** with **Kisumu/Kogony 5641**. All the other particulars are remaining more or less the same. The explanation given for the need of this substitution is understandable as land parcel **Kisumu/Kogony/1266** no longer legally exists following the closure of its register upon being subdivided into three parcels, namely **Kisumu/Kogony/5639 to 5641**.
 - b) That the amendment will not be prejudicial to the Defendant as he will get the opportunity to amend his statement of defence if need be. The amendment will not in any way stop or preclude the Defendant from raising any issue touching on the court's jurisdiction as he seems to intimate through the written submissions.
 - c) That allowing the amendment will allow the parties to zero in on the specific parcel of land **Kisumu/Kogony/5641 leaving out** parcels **Kisumu/Kogony 5639 and 5640** which are not in issue.
 - d) That as the need to amend the plaint has been occasioned by the Plaintiff who is also the one who caused **Kisumu/Kogony/1266** to cease to exist through subdivision into parcels **5639 to 5641**

while the suit was pending in court, the Plaintiff will meet the costs of the application.

6. That in view of the foregoing, the court allows the application dated 18th March 2014 in terms of prayer (a) with costs to the Defendant in any event. The amended plaint be filed and served within the next 15 (fifteen) days.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 12TH DAY OF MAY 2016

In presence of;

Plaintiff Absent

defendant Absent

Counsel Mr Baganda for Stausi for Plaintiff

Mr Aboge for the Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

12/5/2016

12/5/2016

S.M. Kibunja J

Parties absent

Mr Baganda for Stausi for Plaintiff

Mr aboge for Defendant/Respondent

Court: Ruling delivered in open court in presence of Mr Baganda for Stausi for Plaintiff/Applicant and Mr Aboge for Defendant/Respondent.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

12/5/2016

Mr Aboge; I apply for satisfied copies of the proceedings and ruling and leave to appeal.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

12/5/2016

Mr Baganda: No objection.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

12/5/2016

Court: Leave to appeal granted. The Deputy Registrar to supply the counsel with copies of proceedings and ruling upon usual payments.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

12/5/2016