



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

HCC NO. 32 OF 2012

SIMON KIBET (SUING AS THE ADMINISTRATOR OF THE ESTATE OF KIPCHUMBA MARU(DECEASED)PLAINTIFF

VERSUS

CHEPKWONY ARAP CHOGE.....1ST DEFENDANT

JOSEPH ARAP KURGAT2ND DEFENDANT

RULING

(Application for leave to amend plaint; application not opposed; application allowed)

1. The application before me is that dated 28 December 2015 filed by the plaintiff. It is seeking leave to amend the plaint. The original plaint was filed on 14 February 2012. In the plaint, the plaintiff pleaded that his father, one Kipchumba A. Maru (deceased) was a member of Kalenjin Enterprises, a land buying company, and he was allocated a Plot No. 211 in the year 1972. The plot is now registered as Nakuru Municipality Block 29/211. It is pleaded that upon allocation, the deceased settled on the plot where he built a home and lived with his family. In the year 2007, the defendants filed the case Nakuru CMCC No. 1103 of 2007 in the Chief Magistrate's Court at Nakuru. They asked that the plaintiff be evicted. They however contend that the title of the defendants was obtained by fraud and in this case, they seek a declaration that the suit land belongs to the plaintiffs and for cancellation of the defendant's title.

2. The defendants filed a joint defence vide which they refuted the claims of the plaintiffs. It was averred that the deceased never settled on the land but actually sold it to the defendants on 13 April 1976. The defendants then proceeded to develop it and take possession until the year 2007 when the plaintiff together with his family decided to invade the land. This prompted the defendants to file the suit Nakuru CMCC No. 1103 of 2007.

3. Through this application, the plaintiff seeks leave to amend the plaint so as to include the District Land Registrar Nakuru and the Attorney General as defendants. He also wishes to plead fraud on the part of the new defendants for allegedly conspiring with the original defendants to have them issued with title.

4. I have actually not seen anything on record filed by the defendants to oppose the motion. I on my part see no reason why I should not allow the application. I do not see what prejudice will be occasioned to the defendants save for some inconvenience which can be compensated by way of costs.

5. I therefore allow this application. The plaintiff is at liberty to file an amended plaint after giving the

requisite notice to the Government. The applicant will however shoulder the costs of the application as he was at liberty to plead his case properly in the first place.

6. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 20th day of July, 2016

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

NAKURU

In presence of : -

Ms. Kipruto for plaintiff/applicant

Mr. Machage for defendant/respondent

CA: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

NAKURU