



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 180 OF 2014

PHILIP KIPKEMOI TONU.....1ST PLAINTIFF

JOHN KIPKURGAT ROTICH.....2ND PLAINTIFF

VERSUS

JOHANA KIPNGENO LANGAT.....1ST PLAINTIFF

RULING

(Application for amendment of plaint; amendment sought to include new defendants; draft amended plaint only showing the new defendants in the title of the suit; nothing pleaded for or against them in the body of the plaint; no prayers sought against them; no purpose in allowing an amendment only to include a person in the title of a suit; application for amendment dismissed)

1. The application before me is that dated 16 December 2015 filed by the plaintiffs. It is seeking leave to amend the plaint. The plaint sought to be amended was filed on 23 June 2014. In the plaint, the plaintiffs have sued two defendants, that is Johana Kipngeno Langat and Joel Kiptoo Chepkwony. It is their case that they were allotted two plots of land described as Plot No. 799 and 800 Kamara Settlement Scheme. It is alleged that the two defendants later purported to be the allottees of the said plots using fake allotment letters. In their case, the plaintiffs want a declaration that they are the rightful owners of the two plots in issue and eviction orders. A joint defence was filed through which the claims of the plaintiffs were denied.

2. Through this application, the plaintiffs want to amend the plaint to enjoin the Attorney General, the Chief Land Registrar and the Director Land Settlement and Adjudication as defendants. It is averred that the reason for amendment is that the plaintiffs wish to bring on board everybody who was involved in the transactions under question. There is a draft amended plaint which is annexed to the application.

3. When the application came up for inter partes hearing, both Mr. Andama for the defendants and Mr. Mbaka of the State Law Office, acting for the proposed new defendants did not oppose the application. Despite there being no opposition to the same, I am afraid I cannot allow the application, in so far as the plaintiffs wish to amend the plaint in the manner described in the draft annexed amended plaint.

4. I have looked at the draft amended plaint and save for adding the three proposed defendants in the title of the case, there is absolutely nothing pleaded for or against them in the body of the plaint. The three defendants are not even described in the draft amended plaint. Nowhere in the draft amended plaint is it said why the three proposed defendants are being sued.

5. I do not think a party is sued for the fun of it. There must be something that a litigant would wish to bring out against such a party or orders that the litigant would wish to seek against such a party. There is nothing in the draft amended plaint indicating why the three new defendants are sought to be sued. It therefore serves no purpose for me to allow the plaintiffs to amend their plaint as proposed in the draft amended plaint. There is no purpose in me allowing an amendment only to put a person in the title of the suit but nothing is pleaded against such person. It will not add and it will not remove anything to the existing plaint. There is a reason why the rules prescribe that leave first be sought before a party may amend his/her plaint. This is to enable the court sift frivolous proposed amendments from those which have substance. In this application, I see no substance.

6. It is for the above reasons that I decline the application to amend. Since none of the parties opposed it, I make no orders as to costs. For the avoidance of doubt the plaintiffs are free to file another application to amend for consideration.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 21st day of September 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :-

Ms. Kipruto holding brief for Mr. Nyaberi for applicants.

Ms. Ndungu holding brief for Mr. Andama for 1st & 2nd defendants

N/A on part of State Law Office for 3rd defendant

C/Assistant : Janet

MUNYAO SILA

JUDGE

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