



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
LAND CASE NO. 142 OF 2014
PATRICK TOROINO MITINGI
(suing as the administrator of the Estate of
TOROINO MITINGI.....PLAINTIFF/APPLICANT
VERSUS
COUNTY GOVERNMENT OF
WEST POKOT.....DEFENDANT/RESPONDENT

R U L I N G

1. The plaintiff/applicant brought a notice of motion dated **14/7/2016** in which he seeks leave to amend his plaint. The applicant is the administrator of the estate of his late father **Toroino Mitingi** (deceased) who is the registered owner of **LR. No. West Pokot/Kisaunet/321** (suitland).
2. The respondent is the successor of Pokot County Council who are the registered owner of **LR. No. West Pokot/Kisaunet/16** which neighbours the suitland. The respondent is also owner of **LR. No. West Pokot/Kisaunet/319** in its capacity as successors of Pokot County Council who are the registered owners.
3. In the initial plaint, the applicant was seeking cancellation of title for the two properties held by the respondent on the grounds that they were obtained fraudulently. He was also seeking a declaration that the suitland belongs to the estate of the deceased and that a permanent injunction be issued restraining the respondent from interfering with the suitland.
4. In the proposed amended plaint, the applicant has dropped his pursuit for cancellation of titles in respect of **LR. No. West Pokot/Kisaunet/16** and **319** and he is seeking to claim **1.85 acres** out of **LR. No. West Pokot/Kisaunet/16** which he claims was fraudulently included in that title. He wants the portion to revert to the suitland which is less by 1.85 acres. In the alternative, he seeks that the 1.85 acres be valued and he be compensated in money terms.
5. The applicant also seeks an order directing the respondent to surrender a portion comprising an animal yard and market land within the suitland which the deceased had surrendered to the predecessors of the respondent in exchange for allocation of four special plots which special plots were not given as agreed.
6. The applicant's application is opposed by the respondent based on the replying affidavit sworn on 11/8/2016. The respondent contends that the amendments are being sought after the plaintiff has testified and that they are only meant to cure weakness which came out during the hearing of the plaintiff's evidence. That the amendments are being brought too late in the day and amount to filing the suit in

piecemeal. That the proposed amendments will compel the defendant to amend its entire defence which will waste the court's time. That litigation will not end if parties are allowed to amend pleadings belatedly.

7. I have carefully considered the applicant's application as well as the opposition thereto by the respondents. The Civil Procedure Rules allows any party to amend his pleadings at any stage of the proceedings. In the instant case, the plaintiff has testified but he has not closed his case. It is now generally agreed that leave to amend pleadings should be freely allowed at any stage of the proceedings. In *Nairobi Civil Appeal No. 222 of 1998 Central Kenya Ltd -vs- Trust Bank Ltd & 4 Others [2000] eKLR the Court of Appeal Judges* quoted a paragraph from Air Commentaries on the *Indian Civil Procedure Code by Chittaley and Rao* in which the authors had this to say with regard to amendment of pleadings:-

“That a party is allowed to make such amendments as may be necessary for determining the real question in controversy or to avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested or accrued legal right is affected and that the amendment can be allowed without injustice to the other side”.

8. The judges on the Central Kenya Ltd case (supra) had this to say:-

“As we stated earlier the learned trial judge took issue with the length of the proposed amendments. In his view they were too long. Mere length of proposed amendments is not a ground for declining leave to amend. The overriding consideration in applications for such leave is whether the amendments are necessary for the just determination of the controversy between the parties. Likewise mere delay is not a ground for declining to grant leave. It must be such delay as is likely to prejudice the opposite party beyond monetary compensation in costs. The policy of the law is that amendments to pleadings are to be freely allowed unless by allowing them the opposite side would be prejudiced or suffer injustice which cannot properly be compensated for in costs”.

In the instant application the amendments being sought will enable the court to determine the real issues in controversy. This case was filed in 2014. One cannot say that there is unreasonable delay. From what has emerged from the evidence of the plaintiff, there have been attempts to settle the matter and that when things seemed to stall, he was forced to file this suit. I therefore find that there is no delay in bringing this amendment.

9. The respondent is not saying that it will suffer any prejudice. Their only problem seems to be that they are going to amend their entire defence. Amending an entire defence is not a prejudice on the part of the respondent. The plaintiff has dropped prayers which would have not assisted the court to solve the issue in controversy. The fact that the plaintiff has already testified is no bar to granting leave to amend. Amendments can be made at any stage of proceedings.

10. The respondent relied on **Milimani Civil Case No. 2205 of 2000 Harrison C. Kariuki -vs- Blue Shiedl Insurance Co. Ltd** where **Justice Hatari Waweru** declined to allow an application for amendment where all witnesses had testified before an application for leave to amend was made. In declining to grant leave, the judge considered the length of time taken before the application for amendment was made. He also lamented on why the plaintiff did not apply to amend when he was being cross-examined and certain issues came out. This is unlike in the present case where the plaintiff has made the application without unreasonable delay. Even if there will be need to recall the plaintiff, this will not cause any prejudice to the defendant.

11. I find that this is a proper case where leave to amend should be granted. The amendments will enable the court to adjudicate on the real issues in controversy. It will also avoid parties seeking to file fresh suits. I therefore allow the notice of motion dated 14/7/2016 in terms of **prayer (1) and (2)**. Costs shall abide the outcome of the main suit. Amended plaint to be filed and served within seven (7) days from the

date hereof. The defendant to file amended defence within the next fourteen (14) days from the date of service of the amended plaint.

It is so ordered.

Dated, signed and delivered at Kitale on this **20th** day of **September, 2016**.

E. OBAGA

JUDGE

In the presence of Applicant in person.

Court Assistant - Isabellah.

E. OBAGA

JUDGE

20/9/2016