



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

ELC NO. 516 OF 2013

FRANCIS MUYA WAKABUTU.....PLAINTIFF

VERSUS

BENJAMIN KIBUCI.....1ST DEFENDANT

JOSEPH NDUNGU2ND DEFENDANT

ADAMS MUHORO.....3RD DEFENDANT

WANGARI MWANGI (Sued as officials of Molo Kigeta

Self Help Group).....4TH DEFENDANT

RULING

(Application for amendment of plaint; no prejudice will be caused to defendants; application allowed).

The application before me is that dated 1st October, 2014. It is an application seeking to amend the plaint. The said application is opposed by the defendants who have filed Grounds of Opposition.

The original plaint was filed on 3rd September, 2013. In the plaint, the plaintiff pleaded that he was, and still is, the owner of land that he described as plot numbers 1-10, having bought the same from individual shareholders of the defendant group, that is, Molo Kigeta Self Help Group. It is averred that the defendants have used their positions in the Self Help Group, to frustrate the plaintiff's ownership by selling the plaintiff's land to third parties. The plaintiff sought orders to have the defendants evicted and be permanently restrained from interfering with the land which he now described as parcels No. 260, 261, 262, 263, 174, 276, 277, 278, and 279 on the map.

The defendants filed a defence through which they refuted the claims of the plaintiff, that he owns the plots numbers 1-10. It is pleaded that Molo Kigeta Self Help Group, owns 280 acres at Kikopey Ranch Gilgil, which land is supposed to be sub-divided and given to shareholders who are said to be 146 in number. They pleaded that only 10 acres out of the total acreage of 280 acres have been sold through resolutions to settle a debt owed to the original owners. It is stated that the plaintiff's claim of plot numbers 1-10 or plots No. 260, 261, 262, 263, 174, 276, 277, 278, and 279, is not genuine as the plaintiff abused his position as Secretary of the Group to manipulate the records to the disadvantage of members. They pleaded that the map upon which the plaintiff's claim is founded, is not genuine and was a creation of the plaintiff as a vehicle to defraud the Group and its members, since the map comprises of 200 acres instead of the actual acreage of 280 acres.

In the subject application, the plaintiff has deponed that when filing suit, he did not include a lot of his land, and that a number of his plots were not included in the plaint. He now wishes to amend the plaint to include all his parcels of land. I have looked at the proposed Amended Plaint. The plaintiff proposes to delete the paragraph in the original plaint containing the plot numbers described as 1-10 and wishes to plead that he is the legal owner of 163 plots in total, and he has provided the various plot numbers.

In the Grounds of Opposition, it is stated that the application is incurably defective; that the amendments sought are meant to obstruct the course of justice and delay the dispute; that the amendments are prejudicial to members of the Self Help Group who are now elderly and need to be allocated their land as members; and finally, that the amendments sought will substantially change the character of the suit to introduce a totally new cause of action and that the plaintiffs should sue the specific individuals whom he purports to have purchased the land from.

I have considered the application. Courts are generally liberal when it comes to applications to amend, and unless great prejudice will be occasioned to the the other parties, these sought of applications are generally allowed.

On my part, I am not convinced that any prejudice will be caused to the defendants. They will have opportunity to amend their defence to suit the new pleadings. Neither do I think that there is any introduction of a completely new cause of action. The original suit claimed various plots of some land. It is still the same land being claimed in the proposed Amended Plaint and the cause of action remains the same.

I see no good reason why I should not allow the plaintiff to claim all the plots that he believes he is entitled to. Whether or not he is justified to claim them will be the subject of the final determination of the suit. I therefore allow the application.

However, I note that in the draft Amended Plaint, the plots are not sequentially numbered. So that it may be easy for all to comprehend, I direct that the Amended Plaint do provide the plots claimed sequentially. Apart from that, the plaintiff may amend the plaint as proposed in the draft Amended Plaint.

I further direct that the Amended Plaint be filed and served within 7 days from the date hereof.

As to costs, the plaintiff had the opportunity to plead his case properly in the first instance. He will therefore bear the costs of this application.

It is so ordered.

Dated, signed and delivered in open Court at Nakuru this 22ND day of January 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU

In presence of

Mr Lawrence Karanja holding brief for M/s Lawrence Mwangi for plaintiff

Mr Mutonyi holding brief for Mr. Ndubi for defendants/respondents

Emmanuel Maelo : Court Assistant

MUNYAO SILA

JUDGE

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