



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO 568 OF 2013**

**TITUS KIRAGU .....1<sup>ST</sup> PLAINTIFF**

**SUSAN W KIRAGU .....2<sup>ND</sup> DEFENDANT**

**KIORIAH NJOKA (being sued as the Administrator of  
the estate of the late NJOKA WAKIORIAH).....DEFENDANT**

**RULING**

***(Application for amendment of plaint; no prejudice will be caused to defendant by allowing application; application allowed but costs to the defendant)***

1. The application before me is that dated 14 May 2014 filed by the plaintiff. It is an application seeking to amend the plaint. The application is opposed by the defendant who has filed a replying affidavit.
2. The original plaint was filed on 23 October 2013. The case of the plaintiff as pleaded is that he purchased 100 acres of the land parcel L.R No. 10317/14 from one Njoka wa Kiorah (deceased) through two agreements of 50 acres each. It is averred that the full purchase price was paid. However, Kiorah died before transferring the area purchased. When the plaintiff went to plough his land, the defendant, who is administrator of the estate of Kiorah, turned him away. That is what precipitated the suit. The prayers sought in the plaint are for orders of permanent injunction against the defendant, mesne profits, and general damages for trespass and eviction.
3. The defendant filed defence through which he refuted the claims of the plaintiff. It is inter alia pleaded that only 50 acres was sold to the plaintiff through an agreement dated 8 May 2000. But even then, it is averred that this agreement is null and void for want of consent from the Land Control Board. It is also pleaded that the plaintiff has raised the same issues herein in Nairobi Succession Cause NO. 3270 of 2003, which is the succession matter for the estate of the late Kiorah.
4. Through this application, the plaintiff wants to amend the plaint to include a paragraph 15A to ask for transfer of the plots C and F of the suit land, mesne profits, general damages for trespass and for vacant possession of Plots C and F. There is also a proposed additional prayer for a mandatory injunction to compel the defendant to execute the transfer documents and do all acts to transfer the contested areas of the suit land to the plaintiff.
5. In the Replying Affidavit, the defendant has inter alia deposed that the case of the plaintiff is untenable; that no Land Control Board consent was obtained; that in the circumstances the plaintiff is only entitled to

a refund of the purchase price; that the issues herein are subsisting in the succession matter of the late Kiorah; and that the plaintiff has not come to court with clean hands.

6. At the hearing of the application, Mr. Mayende for the plaintiff urged me to allow the application whereas Mr. Aswani for the defendant strenuously opposed the application.

7. I have considered the matter and the submissions of counsel. Before me is an application for amendment of plaint. Courts are usually liberal when it comes to amendment of pleadings unless it can be demonstrated that great prejudice will be caused to the other party. The matters raised in the replying affidavit and in the submissions of Mr. Aswani, are to me matters going to the veracity of the suit itself. The defendant will have opportunity to contest them at the hearing of the matter. The case itself has not started and the defendant if need be can amend his pleadings to suit the amended plaint. If the plaintiff wants to amend his pleadings to include the new prayers, I do not see why I should deny him the opportunity to plead his case as he so wishes. Whether or not the prayers sought, will or are capable of being granted, will be determined after a hearing on merits.

8. The upshot of the above is that I allow the application for amendment. I direct the plaintiff to file and serve the amended plaint within 14 days of this day. The defendant may amend his defence within 14 days of service of the amended plaint.

9. As to costs, the plaintiff could as well have pleaded the claims in the amended plaint in the first instance. He has now inconvenienced the defendant. He will therefore bear the costs of this application.

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 12th day of March 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of:-**

Mr Magata holding brief for Mr. Aswani for defendants/respondent

No appearance for M/s Ochieng, Onyango, Kibet & Ohaga Advocates for plaintiff/applicant

Emmanuel Juma: Court Assistant

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**