



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC 7 OF 2009**

**ERIC TIPIS LENGENI .....1<sup>ST</sup> APPLICANT**

**MICHAEL KANTET TIPIS.....2<sup>ND</sup> APPLICANT**

**BERNARD SHILOO TIPIS.....3<sup>RD</sup> APPLICANT**

**SERAH SHILOO TIPIS (Suing as the personal**

**Representatives of the estate of the Rodah Tipis).....4<sup>th</sup> APPLICANT**

**VERSUS**

**THE NATIONAL MUSEUMS OF KENYA.....1<sup>ST</sup> DEFENDANT**

**KASAIN ESHO.....2<sup>ND</sup> DEFENDANT**

**TOWN COUNCIL OF NAROK .....3<sup>RD</sup> DEFENDANT**

**RULING**

***(Application for amendment of plaint; application not opposed; application allowed)***

1. The application before me is that dated 26 March 2015 filed by the plaintiffs. It is an application brought under Order 8 Rule 3 and it seeks leave to amend the plaint.

2. The original plaint was filed on 22 October 2008. The claim of the plaintiffs is over the land parcel Narok/ Township/360 (the suit land). The original suit as pleaded, is a claim that the 1st defendant and 2nd defendant have illegally occupied and trespassed into the suit land. It is claimed that the 2nd defendant has encroached into the suit land on the basis of rights granted by the Town Council of Narok who were named as 3rd defendant. In the course of the matter, parties agreed to send surveyors to the ground and a report was made. It would appear that the 1st defendant shifted its position on the ground owing to the survey report.

3. I have seen the draft proposed amended plaint. It seeks to plead that upon the survey, the 1st defendant shifted its position on the ground but that the 2nd defendant still continues to trespass into 1 acre of the suit land. The plaintiff intends to plead that since the 1st and 2nd defendant were in illegal occupation, they should pay the accrued land rates totaling Kshs. 1,408,000/= and the ground rent thereof. It is also proposed to substitute the Narok Town Council with the Narok County. In the supporting affidavit of the

plaintiff, it is averred that the amendments are necessary for purposes of setting out the true description of the 3rd defendant and to settle the real questions in controversy.

4. None of the defendants filed any response to the application. At the hearing of the application, only counsel for the plaintiff and 2nd respondent were present, with counsel for the 2nd respondent, stating that she does not wish to oppose the application.

5. Courts are generally liberal when it comes to applications to amend. I do not see what prejudice the defendants will suffer if I am to allow the application to amend. I have my own reservations as to whether it is necessary to substitute the 3rd defendant, since by operation of law the County Government of Narok, as successor of the Town Council of Narok, automatically takes over litigation of the defunct local authority. This is indeed the import of Section 59 of the Urban Areas and Cities Act, Act No. 13 of 2011, which states as follows :-

*59. Any legal right accrued, cause of action commenced in any court of law or tribunal established under any written law in force, or any defence, appeal, or reference howsoever filed by or against any local authority shall continue to be sustained in the same manner in which they were prior to the commencement of this Act against a body established by law.*

6. Be as it may, and for whatever its value, if amending the name of the 3rd defendant will make the plaintiffs happy, so be it.

7. I therefore allow the application for amendment. I grant leave to the plaintiffs to proceed to amend the plaint and direct that the amended plaint be filed and served within 14 days from the date hereof. The defendants may amend their respective defences 21 days after service of the amended plaint.

I make no orders as to costs.

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 23<sup>rd</sup> day of April 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT AT NAKURU**

**In presence of :-**

Ms Mwera holding brief for M/s Ngagi Wanjeru & Co Adv for plaintiff/applicants/

Ms Kipruto for 2<sup>nd</sup> defendant/respondent

Ms Kipruto for 2<sup>nd</sup> defendant/respondent

N/A for M/s Chabeda & Co for 3<sup>rd</sup> defendant/respondent

**MUNYAO SILA**

**JUDGE**

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