



IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L NO. 32 OF 2013

Formerly HCC 85 of 2011

BISHOP BENEDICTO MAKANI BAHATI – CHAIRMAN1ST PLAINTIFF
DANIEL KHATERA – VICE CHAIRMAN.....2ND PLAINTIFF
RICHARD MUNYANG'ORI – SECRETARY.....3RD PLAINTIFF
SAMSON JUMA – ASST. SECRETARY.....4TH PLAINTIFF
MARY WAIRIMU- TREASURER.....5TH PLAINTIFF

*Suing As the Registered Trustees of
Global Field Evangelism Mission*

VS

BEN MUNERIA WESONGA.....1ST DEFENDANT
ERIP PLASTICS LIMITED.....2ND DEFENDANT
MUNICIPAL COUNCIL OF ELDORET.....3RD DEFENDANT
THE LAND REGISTRAR, UASIN GISHU DISTRICT.....4TH DEFENDANT
THE CHIEF LAND REGISTRAR.....5TH DEFENDANT

(Application for amendment; applicant seeking to add County Government; such amendment deemed not necessary; other aspects of amendment allowed).

RULING

The application before me is an application dated 9 September 2013 seeking to amend the plaint.

The original plaint was filed on 13 May 2013 against three defendants, Ben Muneria Wesonga, Eri Plastics Ltd and the Municipal Council of Eldoret. The plaintiff in the original plaint, pleaded that on 15 April 2008, he entered into a sale agreement with the 1st defendant for the sale of the land parcel Eldoret Municipality Blcok 2/83/1 at a consideration of Kshs. 6,500,000/= . The property at that time was charged to the National Bank of Kenya Ltd, and by a further agreement entered on 14 January 2010, it was agreed that the plaintiff pays National Bank a sum of Kshs. 3 Million, payable in monthly installments of Kshs.

70,000/= for a period of 4 years. It was pleaded that the plaintiff so far has paid Kshs. 3,673,000/= towards completion of the purchase price. It was averred that after the first agreement, the plaintiff took occupation of the property and constructed a temporary church building at an estimated cost of kshs. 4,300,000/=. It is averred that later the plaintiff was surprised to learn that the 1st defendant had sold the property to the 2nd defendant, which sale, is said to have been fraudulent. The 3rd defendant issued notices to the plaintiff and threatened to destroy the church building which notice the plaintiffs claimed was illegal.

Together with the plaint, the plaintiff filed an application for an injunction inter alia to stop any threatened demolition of the building. Apparently the order of injunction was served when the demolition of the building was ongoing and part of the building was destroyed.

On 28 June 2011, the plaintiff was granted leave to amend the plaint, and an amended plaint, was duly filed on 21 September 2011. In the amended plaint, the plaintiff added the Land Registrar Uasin Gishu and the Chief Land Registrar as the 4th and 5th defendants. The plaintiff also amended the plaint to plead that its property was destroyed by the 3rd defendant, that exposed the plaintiffs to a loss of Kshs. 1,229,240/=: which they proceeded to claim in damages.

The amendments proposed in this application are twofold. The first is to include a 6th defendant, the County Government of Uasin Gishu, as a party to this suit. It is proposed to add the 6th defendant on the basis that it is the successor of the Municipal Council of Eldoret, the 3rd defendant. The second limb of amendment is to plead certain particulars of illegality on the part of the 4th and 5th defendants.

I have considered the application for amendment. Courts are generally liberal when it comes to allowing applications for amendment, and as a principle, amendments should be allowed unless there will be hardship and great prejudice caused to any party.

I have no problem with granting leave to allow the proposed amendments to plead particulars of illegality on the part of the 4th and 5th defendants. I however have difficulty in approving the amendment to include the County Government as 6th defendant. I have already held previously that where a local authority established by the former Local Government Act (CAP 365) is a party, it is not necessary to amend the plaint, as the County Government by dint of Section 33 of the 6th Schedule of the Constitution of Kenya, 2010, is deemed to be the successor of the local authority. I held so in the case of **Titus Gatitu v Municipal Council of Eldoret, Eldoret E&L No 207 of 2012.**

I do not see any need to depart from that decision. My reasoning is that to insist that parties amend pleadings to reflect this position, can only cause cost and hardship to them, given the amount of litigation that involves the defunct local authorities, yet such amendment is unnecessary as the suit is deemed as automatically assigned by operation of law to the County Government. I will therefore disallow leave to amend to include the 6th defendant for the reason that the suit, in so far as the 3rd defendant is concerned, has by operation of law been assigned to the County Government of Uasin Gishu and it is not necessary to make any amendments to the pleadings to reflect this position.

The upshot of the above is that I only grant leave to amend the plaint in so far as the proposed amendments will not involve the inclusion of a 6th defendant or any pleadings that refer to the 6th defendant. The plaintiff will bear the costs of the application.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 26TH DAY OF JUNE 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Mr. J.N. Njuguna for plaintiff/applicant.

N/A for M/s Marube for 1st defendant.

Mr. Wasike holding brief for Mr. Kiboi for 2nd defendant.

Mr. Aseso present for 3rd defendant.

N/A for State Law Office for 5th defendant.