



**REPUBLIC OF KENYA**

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

**E&L 21 OF 2014**

**IN THE MATTER OF LIMITATION OF ACTIONS ACT CAP 221 LAWS OF KENYA**

**IN THE MATTER OF**

**LAND PARCEL NUMBER UASIN GISHU KIMUMU/6874**

**AND**

**IN THE MATTER OF REGISTERED LAND ACT 2012**

**JOSEPH MOTURI ISOE.....1ST PLAINTIFF**

**ISAAC OYARO.....2ND PLAINTIFF**

**VS**

**SAMUEL KANYI MAINGI.....DEFENDANT**

***(Application to amend Originating Summons; No reason to deny party to amend; application allowed)***

**RULING**

This suit was commenced by way of an Originating Summons filed on 28 January 2014. The Originating Summons has been filed pursuant to the provisions of Order 37 Rule 8 of the Civil Procedure Rules, and Section 38 of the Limitation of Actions Act, CAP 22, Laws of Kenya. The summons as filed is a claim for adverse possession over land described as Uasin Gishu/Kimumu/244/6 and Uasin Gishu/Kimumu/244/9.

Through an application dated 17 July 2014, the applicants (whom I will also refer to as plaintiffs for ease of reference) have applied to amend the Originating Summons so as to have the property described as Uasin Gishu/Kimumu/6874. In the supporting affidavit to the application, the plaintiffs have averred that in 1997 the defendant sold to them the land parcel number Uasin Gishu/Kimumu/244. It is averred that the land has now undergone sub-divisions and the same has now changed to the parcel Uasin Gishu/Kimumu/6874. They have stated that it is important that the O.S be amended to reflect this position.

The defendant has opposed the application to amend the Originating Summons. He has denied having sold land to the plaintiffs and has also denied that the land parcel Uasin Gishu/Kimumu/6874 arose from a sub-division of Uasin Gishu/Kimumu/244. There are other averments in the affidavit denying the claim in the O.S but I think the same are not relevant to the application to amend.

I have considered the application and looked at the draft Amended Originating Summons. Courts are

generally liberal when it comes to applications to amend. Allowing an amendment does not mean that the claim is now allowed. It simply permits the party seeking to amend, leeway to plead his/her own case as he/she so wishes. If the applicants wish to amend their pleadings to claim a land parcel Uasin Gishu/Kimumu/6874, that is their prerogative. Whether or not the parcel Uasin Gishu/ Kimumu/6874 arose from a sub-division of Uasin Gishu/Kimumu/244 is not for me to decide at this point in time. Again, whether or not the plaintiffs have been in possession or not, and whether or not they have a legitimate claim over the land, is also not for me to decide at this point. If they want to claim the land parcel Uasin Gishu/ Kimumu/6874, I don't see why I should stop them from doing so.

In essence, I see no reason why I should disallow the application for amendment. It is hereby allowed. I direct the plaintiffs to formally file and serve the amended Originating Summons within 7 days. The costs of the application will however be borne by the plaintiffs.

It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 27TH DAY OF NOVEMBER 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET.**

***Delivered in the presence of:***