



DKG v EG (Civil Case E018 of 2021) [2023] KEHC 415 (KLR) (26 January 2023) (Ruling)

Neutral citation: [2023] KEHC 415 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE E018 OF 2021
EM MURIITHI, J
JANUARY 26, 2023
IN THE MATTER OF SUMMONS FOR DECLARATION OF MATRIMONIAL
PROPERTY
IN THE MATTER OF MATRIMONIAL PROPERTY ACT, 2013
IN THE MATTER OF MATRIMONIAL CAUSES ACT, 2014
IN THE MATTER OF THE ARTICLES 45, 28, 27, 40, 19 & 20 OF THE
CONSTITUTION**

BETWEEN

DKG PLAINTIFF

AND

EG DEFENDANT

RULING

1. It was held by the court of Appeal for Eastern Africa in *Eastern Bakery v Castelino* [1958] EA 461 that:-

' Amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated'.

Chamber summons

2. By dated September 19, 2022, the applicant in this matrimonial property suit seeks leave to amend by specific prayers as follows:-

1. That the Honourable Court be pleased to grant leave to the plaintiff/applicant to amend her originating summons in terms of the draft Amended originally



summons annexed to add newly discovered matrimonial properties and the same be deemed as duly filed.

2. That the [and] do hereby grant leave to the plaintiff/applicant to file further list of documents.
3. The motion is based principally on the ground No 3 'that the plaintiff has discovered more properties that form part of the matrimonial property in question including P/No 2034, P/No 4286, P/No 1538 and P/No 1977.'
4. By Replying Affidavit dated November 22, 2022, the Defendant has opposed the application for leave to amend on the principal ground set out at Paragraph 3 of the Affidavit 'that the Chamber Summons is incompetent and an afterthought and mere waste of court's time as the properties listed therein do not form part of matrimonial property,
5. With respect the ground for opposition that the properties sought to be included by amendment are not part of matrimonial property is the Defence that the Defendant shall demonstrate at the hearing upon leave to ammend granted.
6. The Defendant shall have an opportunity to answer to the pleading by way of Amended Defence in accordance with the rules and the application to amend on September 19, 2022 cannot be said to be inordinately delayed since the filing of the OS on July 8, 2021, and the discovery of the new assets is a reasonable ground.
7. Apart from filing affidavit evidence as to the nature of the acquisition of the assets sought to be included the defendant does not demonstrate any prejudice that will be caused by the proposed amendment. The defence shall be head when the hearing commences and a fair determination made upon trial.
8. This is a suitable case for the invocation of the principle in Eastern Bakery v Castelino, Supra. The application for leave to amend shall be granted and costs thereof granted to the respondent for any delay in the hearing and determination occasioned by the grant of leave.
9. The plaintiff shall file the Amended plaint with 7 days and the Defendant shall have 15 days to file the Amended Defence in accordance with order 8 Rule 1 and 3 of the [Civil Procedure Rules](#).

Order accordingly.

DATED AND DELIVERED THIS 26TH DAY OF JANUARY 2023.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mr. Ngentu Advocate for Defendant/Applicant.

Mr. Thangicia Advocate for the Plaintiff/Respondent.

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