



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 86 OF 2017

ALICE WANJIRU WAMWEA.....PLAINTIFF/APPLICANT

VERSUS

FAULU MICROFINANCE BANK.....1ST DEFENDANT/RESPONDENT

ANTIQUE AUCTIONS.....2ND DEFENDANT/RESPONDENT

OKSANA INVESTMENT

SUPPLIES LTD.....3RD DEFENDANT/RESPONDENT

NIC BANK.....4TH DEFENDANT/RESPONDENT

RULING

The Applicant filed certificate of Urgency application dated 24th January 2020 together with a Notice of Motion and Supporting Affidavit, where the Applicant/Plaintiff urged the court to be heard on priority basis on grounds that;

- a) The subject matter is suit property worth in excess of Ksh 150,000,000/- sold at a sham public auction by the 2nd Defendant auctioneer at the behest of the 1st Defendant and yet there was no lawful foreclosure.
- b) The Plaintiff contends that the 1st Defendant misappropriated from the Plaintiff's one account Ksh 50,000,000/- that could have defrayed off the alleged outstanding mortgage debt, and hence the power of sale had not materialized.
- c) There was no proper valuation of the suit property, the applicable law as well as **the Constitution** in **Article 159** demands and expedited conclusion of the claim, hence the plea that the amendment motion be heard expeditiously so that the main issue as to the subject property can proceed to trial.
- d) The Amended Plaint seeks to clarify the factual position obtaining in the 3rd and 4th Defendants' claim to the Plaintiff's suit property in that there was no lawful auction at all, so that the court could have a full and clear picture of the matter.
- e) To bring in such additional parties who claim proprietorship of the purported title to the suit land, an Order of the Court is required and an application such as this was therefore necessary.
- f) The Respondents would not be prejudiced in any way by the granting of this application, and they can offer any requisite amendments in reply.
- g) The Plaintiff was met with tragedy after tragedy that explained the delay in bringing the amendments sought as the Plaintiff's son and daughter passed on in a succession that militated against her expeditious move. It is therefore necessary to restore the suit to its original status and parties can ventilate their respective positions.

In the Notice of Motion brought under **Order 1, Rule 10(2) & 25 of the Civil Procedure Rules 2010** and the inherent power of the court, the Applicant sought orders;

- a) The Plaintiff/Applicant be granted leave to amend the Plaint herein in terms of the draft Amended Plaint annexed to the Affidavit

of Alice Wanjiru Wamwea in support hereof.

b) Upon the making of the order hereof in terms of prayer 2 the said Amended Plaint be deemed as filed and served upon the Defendant/Respondents and upon such terms as they count as the Court may determine.

c) The costs of this motion be in the cause.

In the supporting affidavit of Alice Wanjiru Wamwea (**“the Applicant”** herein), she averred that she was met with tragedy after the purported disposal of her suit property to the intended 3rd Defendant, which explains the delay in bringing the amendments the Plaintiff have sought as her son and daughter passed on in a succession that militated against the Plaintiff’s expeditious move. Marked as exhibit “AW-3” are copies of the documents in proof.

She stated that even assuming the “sale” of the suit property to the alleged 3rd Defendants “purchaser” in the stage managed sham public auction “Oksana Investments Ltd” as alleged by the Defendant Faulu Micro Finance Ltd was valid (which the Plaintiff denies), the alleged purchaser could not unjustly benefit from its default as purported.

She affirmed that she was persuaded that there was no lawful or valid public auction as even the purported “sale” price was never paid as stipulated to the 1st Defendant Faulu Micro Finance Bank Ltd. That the Plaintiff had seen the 3rd intended Defendant’s own documents which they produced in HC E 121 of 2018 which prove this. A copy is marked as exhibit “AW 4”.

She stated that the necessity to bring NIC Bank into the proceedings was to safeguard the suit property as he said “Oksana Investment Ltd” is said to have charged the suit property to the said NIC Bank.

She contended that her suit was the first in time relating to her suit property and that the HCCC E 121 of 2018 lodged by the said “purchaser” intended 3rd Defendant against the Plaintiff ought to be stayed, so that the issue of the purported “public auction” can be ventilated within these proceedings.

She stated that the 3rd Intended Defendant was fully aware that Plaintiff’s case herein HCCC NO. 86 of 2017 stood pending before this Court between the Plaintiff and the 1st Defendant Faulu Microfinance Bank Ltd over the same suit property it purported to have a sale, and that the Plaintiff was and remain in possession of the suit property, there was no valid charge to NIC Bank.

She asserted that neither the intended 3rd Defendant herein nor the purported Chargee NIC Bank can be said to have dealt with her suit property as bona fide parties ignorant of Plaintiff’s stake in the suit property since as is material in all as urgent, (as far as the Plaintiff is aware), the original title document s were held by the charge bank ranking first in priority of charges, hence NIC Bank in particular was aware of Plaintiff’s dispute with Faulu Bank Ltd over the property.

REPLYING AFFIDAVIT

The application is opposed vide an affidavit dated 18th February 2020, sworn by Steve Biko Nyagah, Legal Manager of the 1st Defendant herein. He stated that from the onset the Plaintiff’s Application is fatally defective, devoid of merit, vexatious, brought in bad faith and ought to be dismissed.

That the said application is mischievous and a contemptuous attempt by the Plaintiff to embroil the 1st Defendant in costly and unnecessary litigation with the sole aim of embarrassing them and bring their otherwise reputable business into disrepute.

That he wished to respond to the contents of paragraph of the Plaintiff’s supporting affidavit as follows;

a) There was no evidence of the alleged misappropriation as alluded to by the Plaintiff.

b) The statutory power of sale had crystallized at the point of filing suit by the Plaintiff. Further, the court issued several consents both *suo moto* and by consent of the parties where the Plaintiff acquiesced to the sale of the suit property in the event they don’t settle arrears and or the total amount due.

c) The orders and/or consents were an admission to due process having been followed and the power of sale crystallized. The stay of sale was always conditioned upon settlement of arrears.

d) The Plaintiff never complied with any of the orders of the court thus the Court was faced with no other option than to allow the 1st Defendant to realize the security.

e) The charges on the sheet annexed as annexure AW2 are not proof of guilt. It should be considered that persons are innocent until proven otherwise.

f) The persons identified on the charge sheet are charged in their personal capacities and not as agents of the 1st Defendant.

g) The matters are still in court and no verdict has been passed to date.

Further to the above paragraph the court issued court orders which are marked as “SM-1” copies of the court orders issued on 2nd October 2017, 22nd November 2017, 28th March 2018, 21st May 2018 and 31st July 2018.

He denied contents of paragraph 6 of the Plaintiff’s supporting affidavit stating that the 1st Defendant always ensured due diligence was done. Marked SM-2 is a copy of the valuation report dated 19th January 2018.

He stated that the contents of paragraph 7 of the supporting affidavit are denied and the Plaintiff is put to strict proof thereof. This is a court of record and any allegations must be proved. That a proper auction was conducted, property passed to Oksana Investments upon the fall of the hammer. Marked SM-3 is a copy of the condition of sale and the memorandum executed on 28th April 2018. That the auction was conducted on 28th March 2018 and the stay orders subsisting automatically lapsed due to non-compliance on that date.

He stated that there was no specific prayer for joinder in the application. The court cannot grant what has not been prayed for. The only prayer for consideration is for amendment of plaint and not joinder. That the Application for joinder in this case to succeed the Plaintiff has to prove that the Auction purchaser and NIC were aware of any fraud or illegality, as alleged, on the part of the 1st Defendant in the sale of the suit property. There is nowhere in the Plaint that the Plaintiff had alluded to the awareness of the intended parties.

That in response to the contents of paragraph 9 of the supporting affidavit, the 1st Respondent stand to suffer great prejudice if the application is allowed. He stated that;

- a) The intention was to stop the sale of suit property which had already happened and title passed.
- b) The initial cause of action was overtaken by event and the remedy available to the Plaintiff was to file a fresh suit for damages in the event they feel aggrieved by sale.
- c) The Plaintiff was guilty of laches having filed the Plaint in 2017 and applying to amend it 3 years later with no reason given for the delay.
- d) Litigation is now becoming costly and unconscionable contrary to the expectations of the Constitution and the Civil Procedure Act.

In response to paragraph 10 of the supporting affidavit, reference was made to annexure AW-3 thereto, there was no proof of any relations between the Plaintiff and the alleged deceased persons. Further, the persons alluded to passed on 8th March 2018 and 17th November 2017 but surprisingly this was the first time it was being addressed in Court.

In response to paragraph 15 of the supporting affidavit, he stated that;

- a) There was no specific prayer for stay of **E 121 of 2018** for the Court’s consideration; that the two suits are distinct and bear no similarities for the Court to consider stay.
- b) The issue of stay was never considered in 2018 when **E121 of 2018** was filed. Stay is now being considered in 2020 when the court has already issued directions in **E121 of 2018**.

He stated that according to both statutory and decisional law an amendment should not be allowed when it introduces a new cause of action. The same applies here, where the cause of action is now based on malice. It was initially to stop a sale and now it is meant to cancel a sale, 2 years after the contested sale.

DETERMINATION

The court considered pleadings and submissions by parties through Counsel and issues for determination are;

a) Is the application for amendment and/or joinder of parties granted?

ANALYSIS

The Plaintiff relied on **Order 1 Rule 10 CPR 2010**

Sections 1A 1B 3A CPA 2010

Order 8 Rule 5 CPR 2010

Article 48 & 50 COK 2010 to fortify the application for amendment of Plaint and joinder of parties to the instant suit.

The Plaintiff relied on the case of **Central Kenya Ltd vs Trust Bank Ltd & 3 Others [2000] eKLR** that observed;

“That a party is allowed to make such amendments as maybe necessary for determining the real question in controversy or to

avoid a multiplicity of suits, provided there has been no undue delay, that no new or inconsistent cause of action is introduced, that no vested interest or accrued legal right is affected and the amendment can be allowed without injustice to the other side.”

The Applicant submitted that the instant suit was filed on 1st March 2017 to challenge the intended statutory power of sale over the security lodged by the Applicant with the 1st Defendant.

On 2nd March 2017, L.J Ngetich granted the Applicant orders stopping sale and stood over the matter to 30th March 2017. On 30th March 2017, the hearing was scheduled on 21st September 2017 after the Court vacation. On 21st September 2017, the Plaintiff/Applicant was to pay Ksh 500,000/- on 22nd September 2017, Ksh 500,000/- by 5th October 2017 and thereafter a similar amount every 2 weeks. The matter was for mention on 10th October 2017.

The Plaintiff made payments late than the scheduled dates but did not default altogether. At this time, the Applicant lost her son.

On 28th March 2018, L J Ngetich gave Plaintiff specific terms to comply with. Unfortunately, the Applicant lost her daughter. The tragic loss of her children occasioned emotional anguish and instability and she did not comply with the Court orders.

Meanwhile, the Plaintiff/Applicant deposit of Ksh 50,000,000/- credit to reduce outstanding debt was not disclosed.

From the above chronology of events, the Plaintiff sought amendment to the Plaint to determine whether the purported public auction conducted by 2nd Defendant in the challenged sale of Plaintiff's suit property LR 209/11395(IR53103) at the behest of 1st Defendant was lawfully conducted.

In the process the Plaintiff/Applicant sought to join 3rd & 4th Defendants as parties to these proceedings to enable the Court effectually adjudicate on the issue.

The amendments are meritorious; the delay is explained by the Applicant's unfortunate demise of family members. The parties shall not be prejudiced as they shall have right to reply and defend their respective positions.

The 1st Defendant submitted the Plaintiff filed suit in 2017 and thereafter numerous applications seeking orders to stop the exercise of statutory power of sale of plaintiff's suit property. The Court granted the Plaintiff 4 Court orders stopping the sale of suit property.

The Court orders were granted on 2nd October 2017; 22nd November 2017, 28th March 2018, 21st May 2018 & 31st July, 2018 all halting the sale of the suit property.

The Plaintiff/Applicant failed to comply with the conditions set out in the referred Court orders and the Court refused to give further indulgence and allowed the sale of the suit property to proceed. The property was sold via public auction and the property was transferred to the 3rd Defendant.

Upon acquiring title, the proposed 3rd Defendant filed suit ***E121 of 2018*** seeking vacant possession of the property. The matter was heard before Hon. Majanja J who delivered Ruling on 25th February 2020.

The 1st Defendant deponed that statutory power of sale accrued.

The 1st Defendant opposed the Applicant's Application as grant of the same would occasion great prejudice due to laches, undue delay of the matter, the suit was filed in 2017 but is sought to be amended after 3 years. The 1st Defendant shall incur expense and prolonged litigation. The amendments are a mischief. The 1st Defendant relied on the case of ***Raila Amolo Odinga & Anor vs IEBC & 2 others [2017] eKLR***;

“in absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration.”

The amendment of pleadings would amount to a new suit with new parties and multiplicity of suits. The Plaintiff/Applicant's application did not specifically plead joinder of parties.

The 1st Defendant submitted that this Court lacked jurisdiction to hear and determine this application as the matter is *functus officio* after the hearing and determination of the matter in ***HCCC121 of 2018*** specifically paragraph 24 of the Ruling by Hon J Majanja of 25th February 2020 which reads;

“24. The defendant in her application dated 12th July 2019 annexed a copy of the Plaint in HCCC 86 of 2016 wherein she sought for the following prayers:

a. A permanent injunction be issued against the 1st and 2nd Defendant whether by themselves, their agent and servants from

selling, dealing, interfering, alienating or disposing all that piece of land known as L.R. No. 209/11395 from auctioning the Plaintiffs property until determination.

b. The 1st Defendant be compelled to issue the Plaintiff all the monthly financial statements indicating the outstanding debt.

c. The 1st Defendant be compelled to issue the Plaintiff with the valuation report on the charged property L.R. No. 209/11395 and state the reserve price to be used by the 2nd Defendant.

d. The costs of the suit.

e. Interest on d above

f. Any such other or further relief as this Honourable Court may deem appropriate.”

To fortify its position, the 1st Defendant relied on the following cases;

Peter Nganga Muiruri vs HFCK & 2 others [2016] eKLR, the courts stated;

“However, joinder of parties may be refused where such joinder will lead to confusing or clouding issues; the party being joined is unnecessary; unnecessary delay will result; or no cause of action whatsoever arises against the party intended to be joined. The court will also have to consider if the amendment or joinder, as the case may be, will result in prejudice or injustice to the other party which cannot be adequately compensated for in costs. (Beoco Ltd vs alfafa layal Co. Ltd [1994] 4 ALL ER.464)

Amendment should be allowed to allow parties to ventilate the real issues in controversy.”

In *Rubina Ahmed &3 others vs Guardian Bank Ltd [2019] eKLR*, where the Court of Appeal quoted the case of *Elijah Kipngeno Arap Bii vs KCB Ltd [2013] eKLR*, which indicate;

“The law on amendment of pleadings in terms of section 100 of the Civil Procedure Act and order VIA rule 3 of the repealed Civil Procedure Rules under which the application was brought was summarized by this court, quoting from Bullen and Leake & Jacob’s precedents of pleadings- 12th Edition, in the case of Joseph Ochieng & 2 Others vs First National Bank of Chicago, Civil Appeal No. 149 of 1991 as follows;

‘The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side; that the proposed amendment must not be immaterial or useless or merely technical; that if the proposed amendments introduce a new case or new ground of defence it can be allowed unless it would change the action into one of a substantially different character which could more conveniently be made the subject of a fresh action; that the Plaintiff will not be allowed to reframe his case or his claim if by an amendment of the plaint the Defendant would be deprived of is right to rely on Limitations Act.”

The proposed 4th Defendant opposed the application and submitted as follows;

The Plaintiff did not plead any prayer to join parties.

The Plaintiff/applicant did not disclose reasonable cause of action against the proposed 4th Defendant

The proposed amendments are not necessary for the purpose of determining the real questions in controversy between the parties

The proposed amendments are being sought late in the day and have the effect of introducing a whole new suit. It is not sought in good faith.

There is no privity of contract between the Plaintiff/Applicant and the proposed 3rd Parties.

To fortify its objection, the proposed 4th Defendant relied on the case of;

Nation Media Group & Aggrey Atambo vs William Kimutai B. Keitany [2017] eKLR.

DETERMINATION

After considering the application and submissions by parties the court found the following issues for determination;

1. Statutory right to amend pleadings

Section 100 of CPA & Order 1 Rule 10 & Order 8 CPR 2010 grants parties the right to amend pleadings. Numerous authorities highlight the preserve to amend pleadings at any stage of proceedings.

In the case of *Daniel Ouma Okuku vs Kenya Plantation & Agricultural Workers Union & Anor [2019] eKLR* C.A. observed;

*“Order 8 CPR donates wide discretionary power to the Trial Court to allow amendment of pleadings for the purpose of determining the real questions in controversy between the parties or to correct any defect or error in the proceedings. The court may do so either on its own motion or on application by a party....parties can amend their pleadings with leave of the Court at any time before judgment.....as was considered in the case of *Suleiman vs Karasha [1989] eKLR*, it did not matter whether the hearing had been concluded; the Court had to consider such an application for leave to amend a pleading and give effect to such application as it deemed fit.*”

In *Diamond Trust Bank Ky Ltd Vs. Garex K Ltd, Fire Stone & James Mwangi Gitau T/A Fore Front Agencies HCCC1474 of 2001* Court observed;

“The usual principles which attend amendment of pleadings also apply to amendment to Bill of Costs. The Court must see whether the amendment will prejudice or deny the Respondent an accrued Defence or Right; whether the amendment is introducing a new matter; whether the amendment [is/are] necessary and will assist the Court determine real issues in controversy completely and effectually. Delay in bringing the application is also an aspect of prejudice to the Respondent and should be considered.”

The law supports amendment of pleadings at any stage of proceedings as long as leave of the Court is sought. The Court ought to exercise discretion to consider the amendment is timely, necessary to determine and resolve effectively the issues in controversy without occasioning prejudice on either party.

In the instant case, the suit filed, the Plaintiff sought permanent injunction from auction of LR 209/11395, the 1st Defendant to be compelled to issue monthly bank statements of outstanding debt and valuation report of charged suit property with reserve price to be used by 1st Defendant in the intended sale. The proposed amendments include the prayers; now amended to include; taking of accounts by the 1st Defendant in Plaintiff's 3 accounts held in 1st Defendant's bank and an order cancelling the sale auction of the suit property that was conducted and suit property sold to the 3rd Defendant.

After litigation in Court the 1st Defendant instituted statutory power of sale.

Since the Plaintiff/Applicant is now challenging the process and outcome of sale and is of the view the sale was not legal, by dint of these new developments, naturally, the Plaint has to be amended to take into account the current circumstances.

The circumstances have changed; before the suit was heard and determined. After, the sale/auction was conducted by 2nd defendant authorized by 1st Defendant the scenario changed from one of challenging intended statutory power of sale to challenging the process and outcome of the sale. Therefore, the pleadings have to be amended/changed to reflect issues arising out of current/present circumstances that are for hearing and determination.

Secondly, as was alluded to by defendants with reference to *HCC121 of 2018*, that the Plaintiff/Applicant's claim can only lie in pursuit of a claim of damages, that claim would also necessitate amendment of pleadings.

A party under **Articles 22, 48 & 50 COK 2010** is entitled to pursue its claim before a Court of law. The plaintiff contests validity of the sale/auction of its property. The party should be accorded a fair hearing. The Plaintiff/Applicant pleaded that Ksh 50,000,000/- paid towards defraying the loan was not accounted for by 1st Defendant and the value of the suit property and sale price was challenged too.

The 1st Defendant will not be prejudiced nor any injustice occasioned save for inconvenience due to prolonged litigation; as the amendments will be served to them and they will be accorded an opportunity to also amend Defence and participate also in a fair hearing.

The Plaintiff/Applicant explained the delay in amending pleadings after 3 years, it is/was circumstances beyond her control; the tragic demise of her 2 children within a span of 2 years, the Applicant annexed documents to prove these facts.

It is for these reasons that I find the circumstances as outlined above commend themselves to grant of amendment of the Plaint with corresponding leave to amend pleadings granted to the Defendants.

2. Joinder of Parties

The Plaintiff/Applicant deponed that the 3rd & 4th Defendants are party to the suit as the 3rd Defendant admitted purchase of the suit property from the 2nd Defendant after the instant suit was filed and interlocutory proceedings occurred. Secondly, the proposed 3rd Defendant sued the plaintiff in *HCC121of 2018* seeking vacant possession from the suit property and therefore, the proposed 3rd Defendant ought to be sued by the Plaintiff/Applicant in this suit.

This Court found as follows;

The Amended Plaintiff includes the 3rd Defendant as buyer of suit property whose sale is challenged and 4th Defendant Bank who drew a charge on the said property and released funds for purchase of the suit property. A reading of the Amended plaintiff save for naming parties to be joined to the suit, none of the paragraphs relate or refer to the proposed 3rd Defendant & 4th Defendant save that they purchased the suit property in question.

The particulars of malice outlined relate and refer to the 1st Defendant. If the statutory power of sale was not valid, legal or regular, the proposed 3rd & 4th Defendants were not aware or privy to these issues as they were/are not parties in this suit where the Plaintiff/Applicant and 1st Defendant litigated for 3 years. Nothing is on record to suggest/shows that the proposed Defendants did or omitted to do any legal act with regard to the purchase of the suit property. No allegation of fraud, misrepresentation, non-disclosure or illegality is alleged against the proposed 3rd & 4th Defendants. I find no cause of action against the proposed 3rd & 4th Defendants with the Plaintiff/Applicant; there is no privity of contract between the parties sought to be joined and the Amended Plaintiff does not disclose any act or omission with regard to the sale of the suit property on their part that was by the proposed 3rd & 4th Defendants. Of interest paragraph (q) of Particulars of Malice in the proposed amended Plaintiff, the Plaintiff/Applicant refers to 1st Defendant unlawfully disposing of the Plaintiff's LR 209/11395 and not any other party. For these reasons, the Court declines to join the proposed 3rd & 4th Defendants.

3.HCCC121of 2018 Ruling of 25th February 2020

The 1st Defendant submitted that this Court lacks jurisdiction to hear and determine the application filed on 29th January 2020 as the Ruling of 25th February 2020, in HCCC 12 of 2018 rendered this Court *functus officio* with reference to paragraphs 24 & 25 of the Ruling.

HCCC121 of 2018 Oksana Investments Supplies Ltd vs Alice Wanjiru Wamwea is a suit filed by Plaintiff/3rd Defendant for vacant possession of the suit property which was subject of the auction by 1st Defendant through 2nd Defendant.

HCCC86 of 2017 Alice Wanjiru Wamwea vs Faulu MicroFinance Bank the Plaintiff sought to stop sale /auction of the suit property charged as security

These are 2 different cases, parties and subject matter though related, Therefore, the principle *res judicata* by virtue of determination of 1 case HCCC 121 of 2018 would not determine the other case. HCCC 86 of 2017 as it was not placed for hearing and determination in that court.

However, an issue determined in one case will not be open to be heard and determined again as it is already determined by the Trial Court and is only subject to review in that same Court or an appeal in the Court of Appeal. Both Courts; each hearing one of the 2 cases are Courts of equal, similar, concurrent and competent jurisdiction.

Therefore, I concur with Ruling of 25th February 2020 and say this

Paragraph 18, which provides;

***“I now turn to the substance of the Defendant’s application dated 17th November 2019. This Application is in substance an application to set aside the orders that were made on 17th November 2019, dismissing the Defendant’s application for consolidation and allowing Plaintiff’s application for committal of the Defendant.*”**

The matter in HCCC 121 of 2018 that culminated to the Ruling of 25th February 2020 was on consolidation of these 2 cases which application had been rejected by Hon LJ Kasango and now by Hon J Majanja in Ruling of 25th February 2020, where reference to **Paragraph 25** which in part reads;

“It therefore follows that indeed, the Defendant’s prayers were spent her only remedy lay in damages as against Faulu MicroFinance Bank Limited.....”

This means that the matter is still live for hearing and determination. To determine if damages as a remedy is available, pleadings have to be amended to reflect the same, evidence adduced to prove liability to then consider quantum.

This Court has jurisdiction and it is not *functus officio* except on the issues determined by the Trial Court in HCCC121 of 2018.

DISPOSITION

- 1. The Plaintiff’s application to amend the Plaintiff is granted. The Draft Plaintiff is deemed as filed and served and the 1st Defendants has corresponding leave to amend the Defence and serve.**
- 2. The Joinder of the Proposed 3rd & 4th Defendants to this suit is not granted/denied/dismissed as there is no reasonable cause of action against them by the Plaintiff and they were/are not privy to the contract(s) between Plaintiff and 1st Defendant.**
- 3. The Court has jurisdiction to hear any matter in issue with regard to HCCC86 of 2017 as long as it is not an issue determined in relation to same parties and subject matter as already determined in HCCC121 of 2018.**

4. The Application of 29th January 2020 is allowed with costs

DELIVERED DATED & SIGNED IN OPEN COURT ON 23RD NOVEMBER 2020 (VIDEO CONFERENCE).

M.W. MUIGAI

JUDGE

IN THE PRESENCE OF:

MR. MURIMI H/B MR. MATHANGU FOR 1ST DEFENDANT

MR. KINYANJUI FOR THE PLAINTIFF

COURT ASSISTANT - TUPET