



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
SUCCESSION CAUSE NO. 14 OF 2015
NICE RICE MILLERS LTD.....PLAINTIFF
VS
MERU COUNTY GOVERNMENT.....RESPONDENT

JUDGEMENT

By a notice of motion dated 20th February 2017, the applicant pursuant to order 8 Rules 3 and 5 of the Civil Procedure Rules and all enabling provisions of the law seeking that the court be pleased to grant the plaintiff leave to amend its plaint dated 29th June 2015 and transfer Meru CMC CC No. 128 of 2015 to the High Court to be consolidated with the suit herein.

The application was based on the grounds that there has been developments subsequent to the filing of the claim herein which have made the loss suffered by the plaintiff rise. That it is in the interest of justice that the plaint be amended so as to incorporate all the losses and damage suffered by the plaintiff as a result of the acts of the defendant/Respondent.

THAT it is necessary to amend the plaint herein so as to bring out real issues for determination by the court.

THAT is in the interest of Justice for the Lower court file which is between the same parties, and has a hearing on the suit herein to be transferred to the High court and be consolidated for expeditious disposal.

THAT the Respondent doesn't stand to suffer any prejudice. The application was also supported by the affidavit of Charles Njiru Kaburu sworn on 20th February 2017. The application was opposed by the Replying Affidavit of Thurania Atheru sworn on 14th June 2017 and averred among others that plaintiff/Applicant having chosen forum of litigation should not be allowed to transfer and consolidate;

THAT the issues the plaintiff wants to introduce in the suit through amendment are new and amount to a different cause of action and should not be entertained;

THAT the application is an abuse of the court process and that plaintiff was in breach of material non-disclosure and application should be dismissed.

THAT the new issues of introduced through amendment will prejudice the defendant.

I have perused the plaints in both the lower court and the one in this suit and noticed that the cause of

action both in this suit and in the suit in the Chief Magistrates court occurred between 11th May 2015 to 8th June 2015 and relates to the one business exercise of the plaintiff within the Meru County and confiscation of plaintiff's goods. It will therefore save time and resources to have the 2 suits consolidated and heard together. In the circumstances Meru CMC CC No. 128 of 2015 shall be removed into this court for hearing and determination. In the same breath the application for amendment is allowed. I do find that no prejudice will be occasion but rather the amendment is in the interest of the ends of justice. The amended plaint to be filed and served on the defendant within 30 days from today's date and a date to be taken for consolidation between suit herein and the suit in the Chief Magistrates court. Costs of application in the cause.

Ruling Signed, Delivered and Dated this 31ST Day of August 2017.

HON. A.ONG'INJO

JUDGE

In the presence of:

C/A: Penina

Plaintiff :- Ms Thangicia holding brief for Mr Magee for Applicant

Mr Laichena Advocate for Respondent – No appearance

HON. A.ONG'INJO

JUDGE

Mr Thangicia

I pray for mention to confirm filing of amended plaint and further direction.

Order

Matter to be mentioned before DR on 12/10/2017. Notice to issue Respondents' Counsel.

HON. A.ONG'INJO

JUDGE