



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC. CASE NO. 239 OF 2014

LOCAL AUTHORITY PROVIDENT LAND BOARD.....PLAINTIFF

VERSUS

COUNTY GOVERNMENT OF KISUMU

(Formerly MUNICIPAL COUNCIL OF KISUMU).....1ST DEFENDANT

THE NATIONAL HOUSING CORPORATION.....2ND DEFENDANT

RULING

The Plaintiff prays for leave to amend the Plaintiff and that the annexed amended plaintiff be deemed to be duly filed upon payment of requisite fees.

The application is based on grounds that the amendment does not introduce any new fact and in providing technical in nature and that the amendment will assist the court in determining the question in controverting between the parties and that no prejudice will be suffered by the defendants.

The defendants have not filed any response to the application.

Section 100 of the Civil Procedure Act provides:-

“The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”

Order 8 rule 3 of the Civil Procedure Rules provides:-

“(1) Subject to Order 1, rules 9 and 10, Order 24, rules 3, 4, 5 and 6 and the following provisions of this rule, the court may at any stage of the proceedings, on such terms as to costs or otherwise as may be just and in such manner as it may direct, allow any party to amend his pleadings.

(2) Where an application to the court for leave to make an amendment such as is mentioned in subrule (3), (4) or (5) is made after any relevant period of limitation current at the date of filing of the suit has expired, the court may nevertheless grant such leave in the circumstances mentioned in any such subrule if it thinks just so to do.

(3) An amendment to correct the name of a party may be allowed under subrule (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or intended to be sued.

(4) An amendment to alter the capacity in which a party sues (whether as plaintiff or as defendant by counterclaim) may be allowed under subrule (2) if the capacity in which the party will sue is one in which at the date of filing of the plaintiff or counterclaim, he could have sued.

(5) An amendment may be allowed under subrule (2) notwithstanding that its effect will be to add or substitute a new cause

of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the suit by the party applying for leave to make the amendment.”

The amendment herein seeks to introduce a new cause of action which flows from the pleadings. I do find that the application is merited on this ground alone.

Moreover, the respondents have not demonstrated in reply that they will be prejudiced by the amendment.

In conclusion, I do grant prayers:-

- 1. Leave be and is hereby granted to the plaintiff to amend its plaint.**
- 2. The annexed draft of the Amended Plaint be and is hereby deemed as duly filed upon payment of the requisite fees.**
- 3. Cost be in the cause.**

Orders accordingly.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 21st DAY OF JANUARY, 2022

ANTONY OMBWAYO

JUDGE

THIS RULING HAS BEEN DELIVERED TO THE PARTIES BY ELECTRONIC MAIL DUE TO MEASURES RESTRICTING COURT OPERATIONS DUE TO THE COVID-19 PANDEMIC AND IN THE LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON 15TH MARCH 2020.

ANTONY OMBWAYO

JUDGE