



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 1593 OF 2016**

**GEOFFREY MUNGAI THIONGO.....PLAINTIFF**

**VERSUS**

**ELSIE RIDGE LIMITED.....1<sup>ST</sup> DEFENDANT**

**SICHUAN HUASHI.....2<sup>ND</sup> DEFENDANT**

**NATIONAL ENVIRONMENT**

**MANAGEMENT AUTHORITY.....3<sup>RD</sup> DEFENDANT**

**NATIONAL CONSTRUCTION AUTHORITY.....4<sup>TH</sup> DEFENDANT**

**NAIROBI CITY COUNTY GOVERNMENT.....5<sup>TH</sup> DEFENDANT**

**RULING.**

1. Before this Court for determination is the Application dated 17/01/2022 filed under Order 8 Rules 3, Order 51 Rule 1 of the Civil Procedure Rules 2010. The Applicant is seeking for the following Orders: -

a) Spent.

b) THAT the Plaintiff be and is hereby granted leave to amend the Plaintiff as per attached draft Amended Plaintiff.

c) THAT the Plaintiff be and hereby granted leave to file additional documentation as appropriate upon leave to amend the Plaintiff is granted.

d) THAT the Plaintiff be and is hereby granted leave to file additional/amended witness statements as appropriate upon leave to amend the Plaintiff is granted.

e) The costs of the Application be in the cause.

2. From the record, the Applicant applied to file an application to amend the plaintiff on 14/12/2021, which application was allowed. Subsequently, an order was issued allowing the applicant to file the same within 21 days. The application was then fixed for hearing on 18/01/2022.

3. I note that the Applicant filed this application on 18/01/2022 in the morning.

4. On 18/01/2022, the matter was canvassed orally in virtual court whereby the Application was opposed by the defendants seeking to have it struck out having been filed outside the time limited by Court.

5. The instant Application relates to the grant of leave to amend the Plaintiff. However, the same is opposed by the Defendants. It is their submission that the application should be struck out because the same was filed out of time. It is the defendants' evidence that time stopped running on 04/01/2022.

6. In my considered view, **Order 50 rule 4 of the Civil Procedure Rules 2010** makes it clear that the rule applies specifically to computing time under the Civil Procedure Rules, or in accordance with an order of the court.

7. When computing time, the only period exempted is the period between 21st December and 13th January as provided in **Order 50 Rule 4** which provides:

***“Except where otherwise directed by a judge for reasons to be recorded in writing, the period between the twenty-first day of December in any year and the thirteenth day of January in the year next following, both days included, shall be omitted from any computation of time (whether under these Rules or any order of the court) for the amending, delivering or filing of any pleading or the doing of any other act:***

***Provided that this rule shall not apply to any application in respect of a temporary injunction.”***

8. Ms. Njoroge, counsel for the Plaintiff submitted that according to her, the 21 days granted by the court will lapse on 27/01/2022. She deponed that time started running on 14/12/2021 and stopped on 21/12/2021 then began again on 13/01/2021. It is her submission that her filing of the application on 18/01/2022 is within time. She relied on **Order 50 Rule 4 of the Civil Procedure Rules, 2010**.

9. Having considered the facts that have emerged in this case and the evidence adduced by way of affidavit and oral submissions, it is the view of the court that the December Vacation Holiday applies only to the judicial staff and should not be invoked as an excuse for not complying with the timelines issued by the court.

10. However, I am aware, that I am called upon to exercise my discretion to grant or not to grant the application, the exercise of such discretion has to be judicious and should not be whimsical.

11. Taking cognizance of Article 50 of the Constitution on the right to be heard and hold that where a suit can be prosecuted and justice done in spite of the delay in its prosecution, a party should be given a chance to do so.

12. It is a serious matter to shut out a party from being heard unless such party is deliberately seeking to undermine or obstruct the course of justice. See **Shah & Another v. Mbogo [1967] EA 117 and Ivita v. Kyumbu [1984] KLR 44.**

13. In the premises and for the foregoing reasons, the court is satisfied that though there was delay in filing of this application, justice would better be served if I grant the Applicant leave to amend the Plaintiff.

14. From the foregoing, I will allow the Applicant’s Notice of Motion dated 17/01/2022 in terms of prayer number 2, 3 and 4 and give the following orders: -

- 1) That the Amended Plaintiff dated 10/01/2022 together with the additional documentation and additional/amended witness statements be filed and served among the parties by Close of Business today.
- 2) The Respondents are granted leave to file and serve their responses within 7 days after service.
- 3) The Applicant is at liberty to file a response to the Respondent’s response if need be.
- 4) Parties to appear before the Deputy Registrar for Pretrial Conference within 14 days thereafter.
- 5) Failure to abide by the above, orders will be automatically vacated.
- 6) Costs of this application will be borne by the Applicant.

Orders accordingly.

**DATED, SIGNED AND DELIVERED IN VIRTUAL COURT AT NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY, 2022.**

.....

**MOGENI J.**

**JUDGE**

**In the presence of**

Ms. Njoroge h/b for Mr. Karuga for the Plaintiff

Mr. Wangila for the 1<sup>st</sup> Defendant

Mr. Gichuhi for the 2<sup>nd</sup> Defendant

N/A for the 3<sup>rd</sup> Defendant

Mr. Lubullellah for the 4<sup>th</sup> Defendant

Mr. Odhiambo for the 5<sup>th</sup> Defendant

Vincent Owuor Court Assistant