



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
COMMERCIAL AND TAX DIVISION
CIVIL SUIT NO 135 OF 2016

HELLEN MBINYA KING'OLA..... PLAINTIFF/APPLICANT

VERSUS

HEZRON NYANGAU OKIAMBE.....DEFENDANT/RESPONDENT

RULING

[1] The Chamber Application dated **14th July 2016** (as amended) was filed herein on **29th August 2016** for orders that:

[a] the Court be pleased to grant an order that **Nairobi City County** be added or enjoined as a 2nd Defendant herein;

[b] that the draft Complaint dated **19th April 2016** be deemed duly amended in the terms and to the extent shown therein; and

[c] that the draft Complaint dated **19th April 2016** be deemed duly served upon the parties, subject to directions or orders as to payment of requisite court fees.

[2] The Application has been brought pursuant to **Sections 3 and 3A of the Civil Procedure Act, Chapter 21 of the Laws of Kenya and Order 1 Rules 3, 6, 10(2) and 14 of the Civil Procedure Rules, 2010**. It is supported by the Affidavit of the Plaintiff/Applicant annexed thereto, in which she deposed that, having bought the suit property, known more particularly as **Plot No. A5-209 KAYOLE**, from the Defendant, she has been faithfully remitting rates to **Nairobi City County** on an annual basis; that since **Nairobi City County** is the custodian of all leaseholds of land within the County, it is a necessary party to these proceedings; and that it is therefore imperative for the **Nairobi City County** to be enjoined herein for a proper and effectual determination of the real issues in controversy.

[3] The matter was fixed for hearing on **5 September 2016** and notice thereof accordingly served on Counsel for the Defendant/Respondent, **J. Okerosi Ochako & Co. Advocates** and **Koceyo & Co. Advocates** who, on the **28 July 2016**, filed a Notice of Appointment to the effect that the firm had been appointed by the **Nairobi City County** to act for them in this matter. Neither the Defendant nor the Nairobi City County attended court on the **5 September 2016**, and there being no excuse proffered therefor, the matter was urged ex parte by **Mr. Otieno**, Counsel for the Plaintiff/Applicant. According to Learned Counsel, such applications should be liberally granted to enable the Court to reach a just

decision. He relied on the case of **John Gitau Mungai vs. Stephen Kabebe [2014] eKLR** in support of his submissions.

[4] **Order 1 Rule 3 of the Civil Procedure Rules** recognizes that all persons may be joined as defendants if the relief sought against them, whether jointly or severally, raises common questions of law or fact. In **Order 1 Rule 10(2) of the Civil Procedure Rules**, it is provided that:

"The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court to effectually and completely to adjudicate upon and settle all questions involved in the suit, be added."

[5] Accordingly, I would agree with the submissions of **Mr. Otieno** that applications for amendment of pleadings should be freely allowed, for it is now trite that unless such amendments would result in prejudice or injustice to the other party that could not be properly compensated in costs, leave should not be denied. Indeed, in **Central Kenya Limited vs Trust Bank Limited [2002] 2 EA 365**, the Court of Appeal expressed itself thus on this issue:

"Amendments of pleadings and joinder of parties was aimed at allowing a litigant to plead the whole of the claim he was entitled to make in respect of his cause of action. A party would be allowed to make such amendments of pleadings as were necessary for determining the real issue in controversy or avoid a multiplicity of suits provided (i) there has been no undue delay (ii) no new or inconsistent cause of action was introduced (iii) no vested interest or accrued legal right was affected and (iv) the amendment could be allowed without injustice to the other side."

[6] In this matter, the suit was filed on **20 April 2016**, and in paragraph 3 of the Plaintiff, it was pleaded that the plot that is the subject of this dispute is situated in **Kayole Area** within the **Nairobi City County**. The Defendant, upon being served with court process, filed his Memorandum of Appearance through the firm of **J. Okerosi Ochako & Co. Advocates**, on **8 July, 2016**. The instant application was then filed on **18 July 2016**. Clearly therefore, there has been no delay in filing the application. A look at the proposed amendments also reveals that other than the joinder of the **Nairobi City County** as 2nd Defendant, there is no other change proposed in the draft Amended Plaintiff. Accordingly, no new or inconsistent cause of action has been introduced, nor has any attempt been made to adversely affect the Defendant. Indeed, all indications are that the Defendant is yet to file its Defence. The Court is therefore satisfied that the proposed amendment is one that can easily be allowed without injustice being visited on the other side.

[7] In the premises, I would allow the Chamber Application dated **14 July 2016** which was amended on **29 August 2016**, and accordingly issue an order for the joinder of **Nairobi City County** as 2nd Defendant herein; and that the Plaintiff be accordingly amended to reflect the joinder in the terms proposed in the draft Amended Plaintiff annexed to the application, and that thereupon, the Amended Plaintiff be filed and served in the usual manner.

Orders accordingly.

SIGNED, DATED AND DELIVERED AT NAIROBI THIS 23rd DAY OF SEPTEMBER, 2016

OLGA SEWE

JUDGE

