REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

ENVIRONMENT AND LAND CASE NO.158 OF 2012

JOEL OMINO ONYANGO T/A EMMANUEL COMPUTER ACADEMY.....PLAINTIFF

VERSUS

SHILOAH INVESTMENTS LTD.....DEFENDANT

R U L I N G

1. On 13/11/2013, the plaintiff **– JOEL OMINO ONYANGO T/A EMMANUEL COMPUTER ACADEMY –** filed a Notice of Motion dated 6/11/2013 seeking to be allowed to amend his plaint in terms of the Draft Amended Plaint annexed to the application. The motion was brought under Order 8 rule 3 and Order 51 rule 1 of the Civil Procedure Rules, 2010. The plaintiff also prays that costs of the application be in the cause.

2. The application seems to have been prompted by the defendants action of levying distress on the plaintiff while this suit was still pending. The defendant is **SHILOAH INVESTMENTS LIMITED.**

It appears clear that the plaintiff wants to include a claim for damages arising from the defendants action.

3. But the defendant is opposed to all this. Through one **SIKU ELISHA SHAWIN,** it filed a replying affidavit which, interalia, termed the application as incompetent, defective, and bad in law. According to the defendant, the plaintiff wants to introduce a totally new cause of action. The affidavit then blamed the plaintiff for not paying rent and for not prosecuting his application for restraining orders. According to the defendant, the plaintiff amendments are aimed at introducing fresh and additional issues which would ideally warrant institution of a fresh suit.

4. Both sides filed written submissions in lieu of oral arguments. The plaintiff submitted that his application is within the laid down law-which is order 8 rule 3 – and it does not matter whether the amendment would introduce a new cause of action since order 8 rule 3(5) would also take care of that.

5. The defendant's submissions reiterate largely what the replying affidavit contains. This in brief means that the plaintiff is blamed for failing to pay rent and for seeking to introduce a new cause of action through the proposed amendment.

6. I have considered all the material laid before me including some decided cases. I have decided not to mention the cases because of the way they are introduced. Some are illegible and others are merely appended to the submissions without first articulating their value to what is a t hand. The practice of merely throwing cases about without stating their import or value needs to be discouraged. It is a practice that does not reflect positively on counsel's diligence or professionalism. In particular, illegible authorities are an eyesore on record.

7. That said, I must say that this application must be allowed. It is not true that it is incompetent or bad in law. It is properly grounded in the applicable procedural law. That law is cotained in Order 8 rule 3 of Civil Procedure Rules, 2010. It does not matter that the amendment will introduce a new cause of action. As pointed out by the plaintiff, Order 8 rule 3(5) precisely allows for that. But I may even go further and point out that there is nothing wrong with the plaintiff joining two separate causes of action together. Order 3 rule 5(1) clearly allows the plaintiff to bring separate causes of action in the same suit.

8. The defendant's arguments are devoid of merit. The amendments proposed are open to rebuttal both by way of pleadings and evidence. The defendant will have ample opportunity to controvert the plaintiff's case; so why the fear? The courts work is also made easy in that the issues will all be handled in one case; and this is as opposed to the separate suits which the defendant seem to favour. The amendment should be allowed as this will expedite the case. This accords well with the overriding objectives contained in Sections 1A and 1B of Civil Procedure Act (Cap 21) and a envisioned further by Section 3 of Environment and land Court Act No.19 of 2011.

9. The application is therefore allowed and costs will be in the cause.

A.K. KANIARU – JUDGE

29/1/2015