



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 306 OF 2018

KAROLYNE MWATHA MBURU.....1ST PLAINTIFF

MARAGERT WAIRIMU MUCHAU.....2ND PLAINTIFF

SIMON MBUGUA3RD PLAINTIFF

(Being the Officials of LORESHO SOUTH RESIDENTS ASSOCIATION)

VERSUS

ATHI WATER SERVICES BOARD.....1ST DEFENDANT

WATER RESOURCES AUTHORITY.....2ND DEFENDANT

RULING

1. Before me is notice of motion application dated 29.9.2021 filed by the Plaintiffs who are seeking orders to have the Plaintiff amended. They contend that when the court declined to issue orders of injunction, the Defendant invaded the suit premises and forcefully laid water pipes, hence the Plaintiffs need to include the alternative claim of compensation.

2. The 1st Defendant is not opposing the application. The second Defendant has opposed the application through grounds of opposition. They contend that they carried out their work in line with the guidelines set out under **rule 116** of the **Water Resource Management Rules**, thus they had the mandate to demarcate riparian boundary of any water course.

3. No submissions were filed as directed by the court. The provisions of **Order 8 rule 3 (1)** of the **Civil Procedure Rules** provides that:

“ Amendment of pleading with leave.

(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.”

4. In **Daniel Ngetich & Another v K-REP Bank Ltd (2013) eKLR**, it was held that:

“Normally the court should be liberal in granting leave to amend a pleading. But it must never grant leave for amendment if the court is of the opinion that the amendment would cause injustice or irreparable loss to the other side”

5. The 2nd Respondent has not demonstrated as to how they stand to be prejudiced if the amendment is allowed. The issues being raised by the 2nd Defendant, that they were carrying out their duties in accordance with laid down procedures and the law are issues which can be articulated during the trial.

6. In the circumstances, I allow the application dated 24.9.2021 in the following terms:

1. The Amended plaint is to be filed and served within 14 days failure to which, the orders granted herein shall lapse.

2. The Defendants are to file and serve their amended defence within 14 days thereof.

3. Each party to bear their own costs of the application .

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/S Munyiva holding brief for Mulekya for the 1st and 2nd Respondent

Kirimi for the Plaintiff/Applicant

M/S Mohamed holding brief for Lakicha for the 2nd Defendant

Court Assistant: Eddel Barasa