



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**ELC CASE NO. 157 OF 2019**

**YVONNE EDWINA.....PLAINTIFF/RESPONDENT**

**VERSUS**

**MOHAMED S. BAKHRESSA.....DEFENDANT/APPLICANT**

**RULING**

The application is dated 11<sup>th</sup> November 2021 and is brought under Order 8 Rules 3 and 5 of the Civil Procedure Rules 2010, Section 3 of the Environment & Land Court Act seeking the following orders;

1. That this honourable court does grant leave to the defendant to amend his defence in terms of the proposed amended defence & counter-claim attached hereto;
2. That the plaintiff be at liberty to file a reply to amended defence & counter-claim within a period to be fixed by this honourable court;
3. That costs of this application be in the cause.

It is based on the grounds that the time allowed by law to amend without leave has lapsed. That the defendant has obtained evidence in support of his defence and counter claim and has found it necessary to bring the same before this honourable court. That the proposed additions are necessary for the purposes of determining the real questions in dispute. That the proposed amendments will not occasion any prejudice or injustice to the plaintiff. That it is therefore in the interest of justice that the prayers sought by the defendant/applicant be allowed as prayed.

This court has considered the application and submissions therein. The respondent was served but failed to file any response or opposition to the application. In the case of **Central Kenya Limited vs Trust Bank Limited (2000) EALR 365**, the court held that;

“The object of amendment of pleadings is to enable the parties to alter their pleadings so as to ensure that the litigation between them is conducted not on the false hypothesis of the facts already pleaded or the relief or remedy, already claimed but rather, on the basis of the state of facts which the parties really and finally intend to rely on. The power to amend makes the function of the court more effective in determining the substantive merit of the case rather than holding it captive to form of the action and proceedings”

In a similar case of **Joseph Ocheing & 2 Others vs First National Bank of Chicago, Civil Appeal No. 149 of 1991** the court held;

“The ratio that emerges out of what was quoted from the said book is that powers of the court to allow amendment is to determine the true, substantive merits of the case; amendments should be timeously applied for; power to so amend can be exercised by the court at any stage of the proceedings (including appeal stages); that as a general rule, however late, the amendment is sought to be made it should be allowed if made in good faith provided costs can compensate the other side”

In the instant case the defendant submitted that he has obtained evidence in support of his defence and counter claim and has found it necessary to bring the same before this court. That the proposed additions are necessary for the purposes of determining the real questions in dispute. The application is not opposed I find the same is merited and I grant the orders as prayed.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 24<sup>TH</sup> DAY OF MARCH, 2022**

**N.A. MATHEKA**

**JUDGE**