



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**CIVIL CASE NO 2 OF 2012**

MULU MBUVI.....PLAINTIFF/APPLICANT

VERSUS

JOHN SYANDA.....DEFENDANT/RESPONDENT

**RULING**

By a Notice of Motion dated 20<sup>th</sup> November 2013 and filed on 2<sup>nd</sup> December 2013, the applicant is seeking leave of this court to amend his plaint. The application is brought under Order 8 Rules 3(1), (2), (3), (4) and Rule 5(1) of the Civil Procedure Rules and all other enabling provisions of the law. He is also seeking to have the Draft Amended Plaint attached to the application deemed as duly filed and costs of the application.

The application is supported by the grounds found on the face of the application and on the supporting affidavit. The applicant states in the grounds in support that the amendments seek to rectify errors and omissions in the Plaint and raise issues that arose after filing the suit and those omitted in order to properly plead all issues for proper determination of the case. The amendments also seek to correct the name of the Defendant and/or alter the capacity in which the Defendant is sued.

In the supporting affidavit, the applicant deposes that his former advocate failed to include and/or plead material particulars that were essential in the final determination of this case; that all the damages have not been pleaded in the Plaint and if the case proceeds to hearing as it is pleaded the applicant will not recover the actual damages; that it is necessary to amend the plaint to enable this court to adjudicate on all the issues in dispute.

The application was argued ex parte. Mr. Mwangi who held brief for Mr. Nyamu sought adjournment without giving reasons why Mr. Nyamu was not in court and this court declined to allow an adjournment.

I have considered the application and the supporting grounds. In the interest of justice I will and do hereby allow the same. The respondent and third party will not be prejudiced in my view. They will be at liberty to raise any defence available to them. I make the following orders:

- i. The applicant is hereby granted leave to amend his plaint.
- ii. The draft amended plaint is hereby deemed as duly filed subject to payment of requisite filing fees.
- iii. The costs of this application shall be in the cause.

It is so ordered.

**Dated, signed and delivered this 19<sup>th</sup> February 2014.**

**S.N.MUTUKU**

**JUDGE**