



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 104 OF 2013**

**PAUL NJERU MWATHE .....**

**APPLICANT**

**VERSUS**

**VIDYA THIRA MWATHE.....**

**RESPONDENT**

**RULING**

The plaintiff/applicant filed what is commonly referred to as a “home made pleading” on 19<sup>th</sup> October 2010 seeking a declaration that the defendant/respondent holds L.R No. KYENI/MUFU/1189 in trust for him. By the time he drew the said pleading, the plaintiff/applicant was acting in person.

However, two years later on 26<sup>th</sup> October 2012, the plaintiff/applicant sought the services of an advocate and retained Mr. Eddie Njiru who filed a notice of appointment and has now filed a Notice of Motion under **Order 8 Rule 3 and 4** of the **Civil Procedure Rules** seeking to amend the Originating Summons filed on 19<sup>th</sup> October 2010. The same is based on the ground that the amendment is necessary to enable the Court effectively determine the real cause of action.

The application is opposed and in his grounds of opposition to the same, Mr. Rugaita, counsel for the defendant/respondent states that the application is not only defective but is also incompetent, bad in law and incapable of being granted.

Submissions have been filed by both counsels which I have considered together with the application herein.

As stated above, the application is founded under **Order 8 Rule 3 and 4** of the **Civil Procedure Rules**. **Rule 3 (1)** which states as follows:-

***“..... 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”.***

**Rule 4** provides as follows:-

***“Rule 3 shall have effect in relation to an Originating Summons, a Petition and any Originating Notice of Motion as it has effect in relation to a plaint”.***

It is clear that under the law, parties can amend their pleadings at any stage so long as such amendment is sought to clearly bring out the issues in dispute to enable the Court to arrive at a just conclusion. The discretion to allow an amendment is wide and in considering such an application, the Court will take into account the following:-

- *Is the applicant acting male fide*
- *Will the proposed amendment prejudice the other party in such a manner that costs will not compensate him*
- *Is the proposed amendment an abuse of the Court process*
- *Is the proposed amendment necessary to bring out the real issues of the dispute etc etc*

As stated earlier, when the plaintiff/applicant filed his Originating Summons, he did not have the benefit of legal advice. He now has. The amended Originating Summons attached to the application has introduced three other parties who it is alleged hold the suit land in trust for the plaintiff/applicant who also seeks orders in adverse possession. The designation of the suit land has now changed with the introduction of the other three respondents. Such an amendment is intended to enjoin other parties who were not originally sued and if the same is necessary to bring out the real issues in dispute and the parties involved, a Court should not shut out such an amendment.

Although the application is opposed on the basis that it is defective or bad in law, no such defect has been pointed out. The proper law allowing amendments of pleadings has been cited and the application is properly brought under Notice of Motion. In his submissions opposing this application, Mr. Rugaita has gone into matters of evidence tracing how the suit land previously belonged to the respondent's father who is the applicant's grandfather etc etc. Those are matters for the trial Court and I need not go into them now as they are issues of evidence. What is important now is whether the proposed amendment is necessary to aid the Court in determining the dispute at hand. In my view, the application to amend is merited. I allow it.

I accordingly grant the orders prayed in the plaintiff/applicant's Notice of Motion dated 29<sup>th</sup> May 2013 and filed herein on 13<sup>th</sup> June 2013 seeking to amend the Originating Summons. The Amended Originating Summons be served upon the defendants within 14 days of this ruling being delivered and they be at liberty to file their replies within 15 days of service upon them of the Amended Originating Summons.

The respondent shall have the costs of this application.

**B.N. OLAO**

**JUDGE**

**18<sup>TH</sup> JULY, 2014**

18/7/2014

Before

B.N. Olao – Judge

Mwangi – CC

Applicant – absent

Respondent – present

COURT:

Ruling delivered this 18<sup>th</sup> day of July 2014 in open Court.

Respondent present

Applicant absent

**B.N. OLAO**

**JUDGE**

**18<sup>TH</sup> JULY, 2014**