

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC. NO. 304 OF OF 2010

1. MUNA HUSSEIN ADARUS

2. SHIFAA HUSSEIN ADARUS.....PLAINTIFF

- VERSUS -

KHALITHUM ADBULLAHI OMAR.....DEFENDANT

RULING

{1} The applicant brings the notice of motion dated 17th April, 2014 for leave to amend the plaint. He based his prayers on the fact that since filing the suit, the defendant has proceeded and finished construction and that they need to amend the pleadings to plead exemplary damages. He annexed the intended amendment and argued that there will be no prejudice occasioned to the defendants and argued that amendment can be done at any time.

[2] The respondent opposed the application and argued that the application had been fixed for hearing on many occasions and could not be fixed for hearing since the plaintiff had not filed his supplementary list of documents. He argued that the plaintiffs were aware of the approvals to construct by the authorities way back in 2010. That the interim orders had lapsed and that if there was evidence of construction the applicants would have brought contempt proceedings. They argued that the exemplary damages sought were time barred. Further that this was a delay of tactic.

[3] Having heard the parties, I am convinced on balance of probabilities that an amendment will be necessary to enable the court to determine the dispute between the parties. The defendant shall have the right to reply on those amendments within fourteen days.

The plaintiffs having filed the amended plaint, the same shall be deemed as filed. The defendant is given fourteen days to reply to the same. The costs of this application shall be in the suit.

Dated and delivered in open court at Mombasa this 30th day of October 2014.

S. MUKUNYA

JUDGE

30.10.2014

In the presence of:

Mrs Njoroge advocate for Kiarie Kariuki advocate for the plaintiff

Mr Khatib advocate for the interested party