



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUSIA.**

**H.C.C. NO. 13 OF 2012.**

**THE REGISTERED TRUSTEES  
CHURCH.....PLAINTFFS**

**OF GOD IN EAST AFRICA (K)**

**-VERSUS-**

**FREDRICK MAENGWE MATARA**

**& 8 OTHERS.....  
DEFENDANTS**

**R U L I N G.**

The Plaintiff/Applicant filed the Notice of Motion dated 30.8.2013 through M/S. Staussi & Asuna Advocates for leave to amend the plaint dated 18.02.2012. The copy of the annexed draft amended plaint, shows that the plaintiff will change from the "Registered Trustees Church of God in East Africa (K)" to "The Executive Council, Church of God in East Africa (K) (Suing for and on behalf of the General Assembly of the Church of God in East Africa)." The application is based on 14 grounds on the application and the supporting affidavit by Reverend Geoffrey S. Anjela, sworn on 30.08.2013.

The application is opposed by the Defendants who filed grounds of opposition dated 4.9.2013 setting out six grounds filed through M/S. Gabriel Fwaya Advocates.

M/S. Asuna and Mr. Fwaya for the Applicant and Respondents made verbal submissions in support and opposition of the application during the hearing on 9.10.2013. The court has carefully considered the grounds set out in the application the supporting affidavit, grounds of opposition and the submissions by both counsel and find as follows:-

1. That on 24.07.2013, the court directed the plaintiff to file and serve their intended application for leave to amend the plaint in 21 days.
2. That the period of 21 days from 24.07.2013 lapsed on or about 14.08.2013, which clearly shows by the time the application dated 30.8.2013 was filed on 2.9.2013 the period within which to file it given on 24.07.2013 had long lapsed.
3. That the plaintiff did not seek the extension of time within which to file the application before filing the application dated 30.08.2013 and this court has to consider whether the application is therefore incompetent.
4. That Order 8 Rule 3 of the Civil Procedure Rule and all the other Legal provisions cited by the Applicant in the heading of the application, allows this court to allow amendments of pleadings at any stage of proceedings, so long as allowing such amendment will do justice. Article 159 (2) (d) of the Constitution obligates this court to be guided by the Principles of doing justice without

- regard to procedural technicalities.
5. That courts have over time in various cases, allowed amendments of pleadings in almost all instances except where such an amendment would result to an injustice or prejudice to the other party. See **Samuel Oywa Wayuga –vs- The Trustees of the Church of Province of Kenya South Nyanza Province Kisii H.C.C.C. No. 4 of 2004, Roberty Ombaso Nyarebu & Another –vs- Beldina Mokaya** Kisumu C.A.C.A No. 200 of 2011.
  6. That even if the Plaintiff's application was to be declared incompetent merely because of being filed outside the 21 days granted by the court on 24.7.2013, the Plaintiff would still have the option of seeking fresh leave through another application. This would result to unnecessary delay and expenses to both parties and for that reason the application will be looked into favorably.
  7. That there is nothing before this court to show or suggest that the Defendants would be prejudiced or exposed to any injustice if the application was allowed. The additional costs the Defendants would probably incur, including filing of the amended plaint, would be easily catered for by an award of costs.

For reasons shown above, the application dated 30.8.2013 is allowed in the following terms:

1. The Plaintiff/Applicant granted leave to file and serve amended plaint in 14 days.
2. That the Defendants/Respondents to file and serve amended defence in 14 days after service.
3. The Plaintiffs/Applicants to meet the Defendants'/Respondents' costs of this application including costs for filing the amended defence.

**S. M. KIBUNJA,**

**JUDGE.**

**DATED AND DELIVERED ON 27<sup>TH</sup> DAY OF NOVEMBER, 2013 AT BUSIA.**

**IN THE PRESENCE OF ;**