



REPUBLIC OF KENYA

High Court at Kakamega

Miscellaneous Civil Application 140 of 2006

1. REPUBLIC (EX-PARTE MARKO ASUTSI

LIHANDA)

2. LAW ASUTSI LIHANDA) APPLICANTS

VERSUS

THE CHAIRMAN, KAKAMEGA MUNICIPAL

LAND DISPUTES TRIBUNAL RESPONDENT

AND

GEORGE NADIDA OMINO AGOI INTERESTED PARTY

R U L I N G

The Chamber Summons application dated 11.10.10 seeks orders that the applicant be granted leave to amend the Notice of Motion dated 25.1.2007.

The application is supported by the affidavit in support sworn by the applicant's counsel ABEL MOMANYI BIRUNDU on 11.10.10. The grounds of the application is that due to an oversight, the statutory provisions upon which the application is based were not reflected on the application, hence the need for the amendment.

In opposition to the application, the interested party filed grounds of opposition dated 26.10.10. The said grounds of opposition term the application as misconceived, bad in law and fatally defective and ought to be struck out. That the application has been brought after inordinate delay and that the applicant is prejudicial and an embarrassment as the same has been triggered by the submissions of the interested party in respect of the application dated 25.1.07.

The application dated 11.10.10 was fixed for hearing on 4.7.12 when the parties opted to proceed by way of written submissions. This ruling is therefore in respect of the application dated 11.10.10 only. The application dated 25.1.07 was not fixed for hearing on 4.7.12.

The firm of Momanyi, Manyoni & Co. Advocates appeared for the applicant while the firm of Kidiavai & Co. Advocates appeared for the interested party. The court has duly considered the written submissions filed by the counsels.

The power to amend pleadings is provided for under Section 100 Civil Procedure Act which provided as follows:-

“The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceeding.”

Amendment of Originating process, as is the case herein, is also provided for (see Order 8 rule 4) Order 51 rule 10 (1) and (2) provides as follows:-

“(1) Every order, rule or other statutory provision under or

by virtue of which any application is made must ordinarily be stated, but no objection shall be made and no application shall be refused merely by reason of a failure to comply with this rule.

(2) No application shall be defeated on a technicality or for

want of form that does not affect the substance of the application.”

Article 159 (2) of the Constitution provides that justice shall be administered without undue regard to procedural technicalities. The thrust of the interested parties submissions dwell on issues of technicalities. However, for this court to determine the real issues raised in the proceedings herein, regard must be made to the overriding objective of facilitating the just, expeditious proportionate and affordable resolution of disputes. Consequently, it does not matter whether it was the submissions of the interested party that came before the application for amendment or not.

An amendment can be allowed at any time on such terms as the court may deem fit.

I find no prejudice would be occasioned to the interested party herein if the amendment is carried out, save for costs.

Although the application for amendment and the entire proceedings herein have been delayed, the reasons for the delay are partly found on the record. The same cannot be wholly blamed on the applicant. With the foregoing, the application is allowed as prayed with costs to the interested party.

Delivered, dated and signed at Kakamega this 29th day of November, 2012

**B. THURANIRA JADEN
J U D G E**