



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CIVIL CASE NO. 126 OF 2000**

**JOTHAM ANDANJE ANDAI.....PLAINTIFF/APPLICANT**

**VERSUS**

**CHARLES ELIUBA OKUTA.....DEFENDANT/RESPONDENT**

**RULING**

1. The Application dated 21.4.2010 seeks orders to amend the Complaint and it is premised on Order 6A Rule 3 of the Civil Procedure Rules. The only ground in support and which is replicated in the short Supporting Affidavit sworn on 21.4.2010 by the Plaintiff/Applicant is that *“it is important .....to include a prayer for eviction which is not pleaded in [the] original Complaint”*.
2. In a brief and concise Replying Affidavit sworn on 28.6.2010, the Defendant/Respondent, Charles Eliuba Okute, depones that the Application is defective, is devoid of merit and was brought late (after 9 years) and should be dismissed with costs.
3. Is there merit in the Application? In **Standard Chartered Bank [K] Ltd. vs Malindi Engineering Works Ltd. & 4 others – Msa HCCC 22/93, Wambilianga, J.** quoted with approval the decision of **Brett M. R. in Clarapede vs Commercial Union Association [1883] 32 Q.R. 262** where the learned judge stated as follows;  
  
***“However negligent or careless may have been the first commission, and however late the proposed amendment, the amendment should be allowed if it can be done without prejudice to the other side. There is no injustice if the other side can be compensated by costs.”***
4. He then added;  
***“the object of the court is to decide the rights of parties and not to punish them for the mistakes they make in the conduct of their cases.”***
5. I wholly agree and in the matter before me, the Plaintiff/Applicant has made the point in the Complaint filed on 10.7.2000 that he is the registered proprietor of land parcel No. Butso/Ingotse/1891 and that

the Defendant/Respondent is a trespasser therein. The proposed amendment does not in any way add any new cause of action neither does it in any way prejudice the Respondent.

6. In the event, I am satisfied that there is no strong and credible reason put before me to warrant a denial of the leave to amend the Plaintiff. I will grant the same and an Amended Plaintiff shall be filed within 14 days of today's date and the Defendant will be at liberty to amend his Defence within 14 days of service of the Amended Plaintiff.

7. Costs shall be paid to the Defendant in any event.

8. Orders accordingly.

*Delivered, dated and signed at Kakamega this 14th day of April, 2011.*

**ISAAC LENAOLA**

**J U D G E**