

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MACHAKOS

Civil Case 40 of 2005

1. PATRICK M. MAILU

2. JOHN MUTUNGA NZAU

3. PIUS M. MWAKA

4. FREDRIC SYULU MUSIVA

5. DAVID NYAMU MUTISYAPLAINTIFFS/APPLICANTS

VERSUS

COUNTY COUNCIL OF KITUI RESPONDENT

RULING

1. The Chamber Summons dated 5.6.2009 seeks orders that leave be granted to the Plaintiffs to amend their Plaint. The Application is premised on the provisions of Order VIA Rules 3, 5, and 8 of the Civil Procedure Rules and their case is that the proposed amendments are necessary for purposes of determining the real issues in controversy and that no prejudice would be caused to the Defendants.
2. I have perused the annexed Amended Plaint and from what is deponed to in the Affidavit of John Mutunga Nzau, the only addition to the original Plaint by way of amendment is a claim for refund of monies allegedly paid to the Defendant by the Plaintiff to enable procurement of title deeds in Nduiyu and Mwakini Settlement Scheme. The only substantial part of the Plaint to be affected is therefore paragraph 9 thereof and an addition of the claim for refund of the monies in the event the claim for specific performance fails. The claim is replicated, as it should, in the prayers section of the Plaint.
3. I see no response by the Defendant and also see no reason to deny the proposed amendment. This court has unfettered discretion to order amendment of pleadings and as stated by *Sachdeva J.* in Kenya Cold Storage [1964] Ltd vs Overseas Food Services (Africa) Ltd [1982] KLR 453 “*the general rule is that leave to amend will be granted if it will enable the real questions in issue between parties to be raised and where such an amendment will not occasion injury to the opposite party except such as can be sufficiently compensated for by costs.*”
4. I agree and since there is no evidence of prejudice to the Defendant the Application dated 5.6.2009 is allowed with no order as to costs. The Defendant shall be at liberty to amend with Statement of Defence within 21 days of service of the Amended Plaint.
5. Orders accordingly.

Isaac Lenaola

Judge

Countersigned and delivered at **Machakos** this **30th** day of **May 2010**

H.P.G. WAWERU

JUDGE