



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL CASE 115 OF 2009

AYUB NGORE M'LINTARIPLAINTIFF

VERSUS

BERNARD KOBIA1ST DEFENDANT

STANLEY KALUNGE.....2ND DEFENDANT

THE DISTRICT LAND ADJ. OFFICER MERU NORTH.....3RD DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH DEFENDANT

RULING

The plaintiff filed a plaint in this case on 24th August 2009. The plaintiff also filed a Chamber Summons dated 7th December 2009 brought under Order VIA Rule 3 and 5 of the Civil Procedure Rules. By that application, he seeks to amend his plaint. He annexed to the application the proposed amendment of the plaint. The plaintiff by the proposed amendment wants to include a claim of fraud and a prayer for returning his property to its rightful place. The application was opposed by the 1st and 2nd defendants on the basis that the proposed amendment are an afterthought and that the amendment will lead to a delay in this case. The defendants also said that the plaint must have been drawn by someone else on behalf of the plaintiff. The implication of that submission was that the pleadings were drawn for the plaintiff by unqualified person. The opposition by the defendants do not show the prejudice that the defendants will suffer if the amendment is allowed. As stated before, the plaintiff's plaint was filed on 24th August 2009. The first and 2nd defendant filed their defences on 24th September 2009. The plaintiff therefore cannot be said to have brought the present application after inordinate delay. The case that sets out the principles of amendments of pleading is **Eastern Bakery Castelino** [1958] EA 461. In that case, Sir, Kenneth O'Connor stated as follows:-

‘It will be sufficientto say amendments to pleadings sought before the hearing should be freely allowed, if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs The court will not refuse to allow an amendment simply because it introduces a new case But there is no power to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject matter of the suit. The court will refuse to amend where the amendment would change the action into one of a substantially different character; or where the amendment would prejudice the rights of the opposite party existing at the date of the proposed amendment, e.g. by depriving him of a defence of limitation accrued since the issue of the writ. The main principle is that an amendment should not be allowed if it causes injustice to the other side.’

The argument that plaintiff's pleadings were drawn by an unqualified person can only be entertained under an application, which was not the

case here. Defendant's opposition is rejected. I find the prayer to amend plaint to be merited. I grant the following prayers:-

- 1. The plaintiff is granted leave to file and serve an amended plaint amended in terms of the draft annexed to the Chamber Summons dated 7th December 2009 within 14 days from this date hereof.*
- 2. The defendants are granted leave if need be, to file amended defence to the amended plaint within 14 days of service of such amended plaint.*
- 3. The costs of the Chamber Summons dated 7th December 2009 are awarded to the 1st and 2nd defendants.*

Dated and delivered at Meru this 21st day of May 2010.

MARY KASANGO
JUDGE