



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 392 of 2008

**CITY COUNCIL OF NAIROBI.....PLAINTIFF/APPLICANT**

**VERSUS**

**JOEL KANI OLE SIKAMOI....DEFENDANT/RESPONDENT**

**R U L I N G**

1. By the application dated 4/03/2009, the Plaintiff/Applicant craves leave of this Honourable Court to amend its plaint dated 13/08/2008 in terms of the amended plaint annexed to the application. The Applicant also prays that the annexed draft amended plaint be deemed as duly filed and served upon payment of requisite court fees. The application is supported by the grounds on its face and also by the averments contained in the affidavit sworn by **Mary N. Ngethe** the Applicant's Director of Legal Affairs.

2. The main reason why the Applicant seeks to amend its plaint is that there has been discovery of fresh information which had not been availed to the Applicants' Advocates at the first instance. The Applicant says that the proposed amendment will enable the court to fully appreciate the pertinent issues in this case. The Applicant argues that the subject matter of this case is the disputed ownership of the suit land known as LR No.11973 hived off from LR No.4894/77.

3. The application was opposed. The Replying Affidavits were sworn by Joel Kani Ole Sikamoi the Defendant/Respondent on the 23/03/2009 and 18/11/2008 respectively together with the annexures thereto. The Defendant argues that the proposed amendment will not assist this court at all in resolving the issues in controversy. The Defendant relies on two authorities (i) Central Kenya Ltd. vs Trust Bank Ltd. [2005] 2 EA 365 in which the Court of Appeal held:-

*“The amendment of pleadings and joinder of parties was aimed at allowing a litigant to plead the whole of the claim he was entitled to make in respect of his cause of action. A party would be allowed to make such amendments of pleadings as were necessary for determining the real issue in controversy or avoiding a multiplicity of suits provided (i) there had been no undue delay, (ii) no new or inconsistent cause of action was introduced, (iii) no vested interest or accrued legal right was affected and (iv) the amendment could be allowed without injustice to the other side. Accordingly, all amendments should be freely allowed at any stage of the proceedings, provided that the amendment or joinder did not result in prejudice or injustice to the other party that could not be properly compensated for in costs; Beoco Ltd. vs Alfa Laval Co. Ltd. [1994] 4 All ER; 664 adopted. Neither the length of the proposed amendments nor the mere delay were sufficient grounds for declining to grant leave to amend. The overriding considerations were whether the amendments were necessary for the determination of this suit and whether the delay was likely to prejudice the opposing party beyond compensation in costs.”*

4. The second case referred to by the Respondents was Kenya Ports Authority –vs- East African Power & Lighting Company Ltd. KLR (E& L) 1, 82 where the Court of Appeal held, inter alia at holding number (5) that *“the application to amend could not be allowed where it was made at a very late stage. Such an application must be brought at the earliest convenience.”* Counsel for the Respondents submitted that the Applicants failed the test of timeliness and also failed to demonstrate to this court that the intended amendments will help the court to determine the issues in controversy.

5. In reply, counsel for the Applicants submitted that the two authorities cited by the Respondents

support the Applicants plea for leave to amend. Counsel argued that there was no delay nor had the Respondent given evidence of such delay. He said that the instant application has been brought six months after filing of the original plaint; that no prejudice is likely to accrue to the Respondent if the order sought is granted and finally that the proposed amendments do not introduce new causes of action.

6. I have considered the application, the circumstances and facts surrounding this case. In light of the above and especially in light of the Court of Appeal decision in the case of Central Kenya Ltd. vs Trust Bank Ltd. (above) I am satisfied that the Applicant has satisfied the conditions for granting an application for leave to amend. Accordingly, I grant leave to the Applicant to amend its plaint dated 13/08/2008 in terms of the draft amended plaint annexed to the application. The Applicant is allowed 14 days from the date hereof to file a proper amended plaint. The costs of this application are awarded to the Respondent.

Orders accordingly.

Dated and delivered at Nairobi this 25<sup>th</sup> day of September 2009.

**R.N. SITATI**

**JUDGE**

Delivered in the presence of:-

M/s E N Omotii (Absent) for the Plaintiff/Applicant

Mr Matheka (Present) for the Defendant/Respondent

..... – court clerk