

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI**

Civil Case 19 of 2005 (OS)

CLEMENT CHIURI KARIUNGI PLAINTIFF

Versus

JOHN KABUKU GACHARI

MICHAEL KAGUAMBA GACHARI DEFENDANTS

RULING

The applicant by his application by chamber summons dated 30th May 2007 seeks leave to amend his originating summons. In support of that application, the applicant stated that the amendments were necessitated by the error of his advocate who assumed that the property in question was registered in only one name. That the amendment which is sought would reflect the correct position of the registered owner. The applicant was of the view that the amendment will not lead to prejudice to the defendant. The defendant opposed the application and in so doing argued that the application has been brought after inordinate and inexplicable delay. The defendants were of the view that the amendment would cause prejudice to them. In submission defence counsel further argued that directions of the hearing of the originating summons had been given and therefore an amendment should not be allowed. In the case of *KENYATTA NATIONAL HOSPITAL vs KENYA COMMERCIAL BANK LTD & ANOTHER* (2003) 2 EA the court set out the principles that should guide a court considering an application for amendment. The holding of that case was;-

“the principles governing the grant of leave to amend pleadings are well settled. The general rule is that the 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 party can be compensated by costs (EASTERN BAKERY vs CASTELIN (1958) EA 461 ; OCHIENG AND OTHERS VS FIRST NATIONAL BANK OF CHICAGO Civil Appeal Number 149 of 1991 followed). It was in the greater interest of justice to breathe life into the plaintiff’s action by allowing the amendment in order to properly constitute the plaintiff. Application allowed.”

In considering an application for amendment the court should bear in mind that the power to allow amendment is intended to determine the true, substantive merits of the case. The amendments should be made timeously. The power to grant leave to amend can be exercised by the court at any stage in the proceedings. Bearing that in mind I have considered the application herein and I do find that the same is merited. The court grants leave to the plaintiff to file and serve an amended originating summons in terms of the ones annexed to the application dated 30th May 2007 within 14 days from this date hereof. The defendant is granted a corresponding leave to file a further affidavit within 14 days of service. The defendant is granted costs of the chamber summons dated 30th May 2007.

DATED AND DELIVERED THIS 25TH DAY OF JUNE 2008

MARY KASANGO

JUDGE